

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD R. FLYNN, ET AL., :
 : Case No. 17-CV-04806WB
 Plaintiffs, :
 :
 vs. : Philadelphia, Pennsylvania
 : October 26, 2018
 MANUFACTURERS AND TRADES TRUST : 10:51 a.m.
 COMPANY, :
 :
 Defendant. :
 :

TRANSCRIPT OF HEARING PLAINTIFFS' MOTION TO COMPEL DISCOVERY
BEFORE THE HONORABLE RICHARD A. LLORET
UNITED STATES MAGISTRATE JUDGE

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INDEX

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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WITNESSES FOR PLAINTIFF:

Richard Kaminski (By Mr. Shenkan)	5			
Scott Matthews (By Mr. Shenkan)	89			
Alex Wilshaw (By Mr. Shenkan)	113			
Ken Fries (By Mr. Shenkan)	128			

EXHIBITS:Marked

Plaintiffs' Exhibit 1	50
Plaintiffs' Exhibit 2	51
Plaintiffs' Exhibit 3	66
Plaintiffs' Exhibit 4	72
Plaintiffs' Exhibit 5	105
Plaintiffs' Exhibit 6	106
Plaintiffs' Exhibit 7	141
Plaintiffs' Exhibit 8	144

1 OCTOBER 26, 2018

10:51 A.M.

2 (Call to Order of the Court)

3 THE COURT: Good morning, everyone. Please be seated.

4 COUNSEL: Good morning, Your Honor.

5 THE COURT: We're here on a discovery hearing, a
6 hearing to listen to the argument and also take testimony on a
7 discovery dispute between the parties that's arisen by way of a
8 motion to compel and for sanctions.

9 We're here in the matter of Flynn vs. Manufacturers and
10 Trades Trust Company, 17-CV-04806-WB. Counsel, would you enter
11 your appearances, please, first for the Plaintiffs and then for
12 the Defense?

13 MR. SHENKAN: Richard Shenkan on behalf of Plaintiffs,
14 Your Honor. Good morning.

15 THE COURT: Mr. Shenkan, good morning.

16 MR. FABIAN: Good morning, Your Honor. My name is Rudy
17 Fabian.

18 THE COURT: Mr. Fabian, welcome. And for the Defense?

19 MR. PARKER: Good morning, Your Honor. Scott Parker
20 from Parker Ibrahim & Berg on behalf of the Defendant, M&T Bank.
21 I'm here with my colleague Fred Hoensch and Marissa Edwards.

22 MS. EDWARDS: Good morning, Your Honor.

23 MR. HOENSCH: Good morning, Your Honor.

24 THE COURT: Good morning to all of you.

25 MR. EDWARDS: Thank you.

1 MR. PARKER: Thank you.

2 THE COURT: Welcome. Yesterday I filed a tentative
3 memorandum or memorandum of my tentative thoughts on disposition
4 in this case. It is not meant to be binding, but it was meant to
5 bring counsel up to speed on what I'm thinking at this point in
6 time based on having read what's been submitted to me. I'm glad
7 to structure the hearing in any way that seems productive, but at
8 this point my thought is that I simply allow counsel for
9 Plaintiff as the moving party to go forward with his
10 presentation, put on such evidence as he deems fit. We'll take
11 argument as needed after the evidence is in. Mr. Shenkan?

12 MR. SHENKAN: Your Honor, thank you very much. I don't
13 have any objection to that. I would ask that there are two I.T.
14 people from the bank.

15 THE COURT: Uh-huh.

16 MR. SHENKAN: I would simply like to begin by
17 questioning Mr. Kaminski, and I would like to sequester Mr.
18 Wilshaw, momentarily, for the duration of his testimony.

19 THE COURT: We'll grant the motion to sequester. So,
20 Mr. Wilshire, I believe it is, is that the correct pronunciation?

21 MR. SHENKAN: Wilshire (phonetic).

22 THE COURT: Wilshire?

23 UNIDENTIFIED SPEAKER: Wilshaw, Your Honor.

24 MR. SHENKAN: Wilshaw, excuse me.

25 THE COURT: Mr. Wilshaw, please step out of the

1 courtroom.

2 Do you want to call your first witness, Mr. Shenkan?

3 MR. SHENKAN: I will, Your Honor. Your Honor, prior to
4 me doing so, I simply wanted to state for the record as a matter
5 of efficiency that I will do my very best to keep the testimony
6 relevant to the motion -- subject motion. I know I don't want to
7 waive my right in the future in the event that I do need to take
8 a subsequent deposition after I receive additional documents and
9 what have you, but I will do my best to keep things as narrowly
10 focused as possible.

11 THE COURT: Thank you. I accept that.

12 MR. SHENKAN: Mr. Kaminski, please.

13 THE COURT: Do you want to approach the Deputy and
14 please be sworn? Crystal, can you swear in the witness.

15 RICHARD KAMINSKI, WITNESS, SWORN

16 THE CLERK: Please state your full name and spell your
17 last name for the record.

18 THE WITNESS: Richard Alan (phonetic) Kaminski. Last
19 name K-A-M-I-N-S-K-I.

20 THE CLERK: Thank you.

21 THE COURT: You may proceed, counsel.

22 DIRECT EXAMINATION

23 BY MR. SHENKAN:

24 Q Good morning, Mr. Kaminski.

25 A Good morning.

1 Q Mr. Kaminski, could you tell us briefly about your
2 educational background.

3 A Educational background. I was -- I did my undergraduate at
4 Eleanor Wesleyan University in music and did graduate work at
5 University of Nevada Las Vegas, both in music as well.

6 Q Okay. Any post-graduate work?

7 A I have obtained certifications in e-Discovery in
8 various capacities. I hold two certifications from LexisNexis
9 for law, as well as three certifications, the Relativity
10 Certified Admin, the Relativity Certified User, and the
11 Relativity Analytics Expert designations.

12 Q Any other I.T. related qualifications that you have with
13 respect to education or certification?

14 A Not that I can think of at this time, no.

15 Q You were certified, just so I understand, you were certified
16 in Relativity?

17 A Uh-huh. Yes, that's correct.

18 Q And you said LexisNexis; what does that mean?

19 A Law pre-discovery is the program in question.

20 Q Law pre-discovery?

21 A Correct. It's a processing platform.

22 Q And what were the other certifications?

23 A Relativity certified administrator, Relativity certified
24 user, and a Relativity analytics expert.

25 Q Okay. The Relativity and the LexisNexis, are those the

1 limited numbers of certifications that you have?

2 A Those are the two platforms in which I hold certifications,
3 yes.

4 Q Do you have any certifications or qualifications with
5 respect to any court e-Discovery, liaison committees, that sort
6 of thing?

7 A I'm not certain I understand the question.

8 Q Have you been part of any discovery committee putting
9 together formats for court systems of any kind?

10 A Not to my recollection, no.

11 Q Tell me about your work experience, please.

12 A I originally entered the discovery industry back in 2005. I
13 worked in the Bibliographic Coding Department normalizing data,
14 preparing load files. I also trained --

15 THE COURT: Where was the Bibliographic Coding
16 Department?

17 THE WITNESS: In Chicago, Illinois.

18 THE COURT: What company was it with?

19 THE WITNESS: Originally On-Site e-Discovery, then
20 acquired by Integreon.

21 THE COURT: Okay. Go ahead, counsel.

22 THE WITNESS: I trained over 150 people during that
23 three year tenure at that position in how to code documents
24 appropriately. After that I moved into project management with
25 Integreon.

1 THE COURT: Is that how to -- excuse me -- how to code
2 documents, how to code documents for what purpose?

3 THE WITNESS: How to capture bibliographic information
4 into specific fields for the purposes of creating searchable
5 databases around those documents.

6 THE COURT: Very well. Go ahead.

7 THE WITNESS: I then moved into project management,
8 which gave me a larger scope of responsibility, slightly less
9 technical in actually operating the systems, but certainly
10 technical in advising how those systems worked and how to best
11 leverage them.

12 I then moved to Trustpoint International where I was a
13 senior project manager. In that role, project management did
14 have a much more technical role. I was involved from the
15 inception of the case -- the discovery on the case, from the
16 initial set of data for processing and actually sometimes
17 collecting the data, processing the data, creating the hosted
18 database, making sure that data was indexed, searchable. You
19 know, it was facilitating the review of the documents and then
20 producing the documents for -- you know, for purposes of e-
21 Discovery productions.

22 BY MR. SHENKAN:

23 Q When did you work for Trustpoint?

24 A From April of 2011 through 2014, sometime I believe, late
25 2014.

1 Q Okay. And you worked for Integreon then, from 2005 to March
2 of 2011?

3 A Correct.

4 Q Okay.

5 A Okay.

6 Q Carry on, please.

7 A Sure. After my time at Trustpoint I moved to IRIS. IRIS, I
8 was the area manager for client services overseeing the project
9 management team in, you know, supporting their efforts, as well
10 as providing escalated support to end clients regarding subject
11 matter; basically, acting as a subject matter expert for active
12 clients in my area. After that --

13 Q Let me just back up.

14 A Certainly.

15 Q This Integreon, what is the nature of that business?

16 A Integreon, it was a litigation support provider.

17 Q And what is the purpose of this Trustpoint International?

18 A The same thing.

19 Q And IRIS is the same litigation support with e-Discovery?

20 A It is.

21 THE COURT: Counsel, I'm not going to bar you from
22 continuing along this line of questioning, but my main interest
23 is in Mr. Kaminski's familiarity with the Defendant's --

24 MR. SHENKAN: Okay.

25 THE COURT: -- in-house program and what, if anything,

1 that bears on his ability to provide the necessary expertise for
2 e-Discovery.

3 MR. SHENKAN: Let me just take another two minutes and
4 just --

5 THE COURT: Sure.

6 MR. SHENKAN: -- finish up your education, your work
7 experience.

8 THE WITNESS: Understood. After I was at Iris I moved
9 to Inventus. And that's another litigation support provider
10 where I was the Director of Processing. I was responsible for
11 preparing raw data and load -- creating load files and searching,
12 filtering that data. I was responsible for overseeing the team
13 that performed that work.

14 Q How long did you do that for?

15 A Just shy of a year and a half.

16 Q Okay.

17 A Then I went to McDermott, Will & Emery out of Chicago. I
18 was a litigation support project manager there working directly
19 with attorneys on --

20 Q Okay.

21 A -- e-Discovery matters. And then most recently with Avalon
22 Document Services out of Buffalo where I'm the Vice-President of
23 Professional Technical Services overseeing all forensics, project
24 management, processing and hosted services.

25 Q Okay. So, you've been in the e-Discovery business actually

1 since 2005?

2 A Correct.

3 Q Okay. And how is it that you came to work for this project?

4 A For this project, I was engaged as the e-Discovery liaison
5 by M&T Bank.

6 Q Have you done other work with M&T Bank?

7 A I have.

8 Q Have you done other e-Discovery work with M&T Bank?

9 A I have.

10 Q What was the -- what was the role that you undertook as an
11 e-Discovery liaison?

12 MR. PARKER: Your Honor, I'm happy to have Mr. Kaminski
13 answer that question. I would just caution that he not reveal
14 any attorney-client information with respect to any of the
15 projects he's done with respect to M&T --

16 THE COURT: Very well.

17 MR. PARKER: -- but I'm okay with him discussing it
18 generally.

19 THE COURT: We'll proceed and if there's specific
20 objections to specific questions, we'll deal with them as they
21 arise.

22 MR. PARKER: Thank you, Your Honor.

23 THE COURT: Thank you.

24 THE WITNESS: Sorry. Can you --

25 BY MR. SHENKAN:

1 Q Well, let me -- with this particular case my question is
2 what did you understand your responsibilities to be as an
3 e-Discovery liaison with respect to this particular case?

4 A I believe it was outlined in an order, but to summarize
5 for -- what my understanding is, is to facilitate the e-Discovery
6 process, to advise on best practices, to gain an understanding of
7 the -- of the systems necessary, to be able to advise on that,
8 that type of -- that type of work.

9 Q You're referring to the e-Discovery document 6-1?

10 MR. SHENKAN: May I approach, Your Honor --

11 THE COURT: Yes.

12 MR. SHENKAN: -- just very quickly?

13 THE COURT: And if you have a copy for me, I would
14 appreciate it.

15 MR. PARKER: I'd like a copy, as well, please.

16 THE COURT: Thank you.

17 BY MR. SHENKAN:

18 Q Is this what you're referring to, Mr. Kaminski?

19 A It is.

20 Q Okay. And you're referring particularly to paragraph four?

21 A Correct.

22 Q Would you just read to me very quickly what that is?
23 Actually, I don't need you to read it.

24 THE COURT: No.

25 MR. SHENKAN: I don't need you to read it.

1 THE COURT: We don't need it. I can read it.

2 MR. PARKER: Your Honor, also my copy only has every
3 other page.

4 THE WITNESS: Yeah.

5 MR. PARKER: I have pages one, three, and five. I do
6 not have two and four.

7 THE COURT: Well, you can have my copy.

8 THE WITNESS: Mine as well.

9 MR. PARKER: Your copy also has one, three, and five
10 and not two and four?

11 THE WITNESS: Mine, as well.

12 THE COURT: Well, it looks like the one I have has all
13 the pages, even the even numbered pages, and so we can use this
14 as the copy. You can question the witness from it, and then
15 we'll --

16 MR. SHENKAN: I will supplement. I apologize, Your
17 Honor.

18 THE COURT: Yeah. That's fine. I think I can shorten
19 this. I'm familiar with the terms of the order, so if you want
20 to question the witness about the specifics of the order.

21 MR. SHENKAN: Very quickly.

22 THE COURT: Sure.

23 BY MR. SHENKAN:

24 Q Can you tell me about your familiarity of the M&T systems
25 with respect to the discovery process in this case? What systems

1 were accessed, what systems were used, and tell me about your
2 familiarity with those systems?

3 A Certainly. There are multiple systems at play. There's
4 LOCUS, Shaw, AutoIMS, CACS CAFE, potentially --

5 THE COURT: What was the last one, CAPS CAFE?

6 THE WITNESS: CACS CAFE. It's C-A-C-S or CAFE, the
7 front end of that application.

8 BY MR. SHENKAN:

9 Q What did you say, front end of what?

10 A The front end of that application. It's the interface.

11 Q And it's called C-A-C-S?

12 A No. CACS is the -- is the program, CAFE is the collections
13 application front end.

14 Q Okay. Go ahead.

15 A There's On-Demand. They're using Microsoft Access and
16 SharePoint. They're using a system called FileNet.

17 Q On-Demand, SharePoint, FileNet?

18 A Uh-huh.

19 Q What was the last one you said?

20 A That was the last one that I said.

21 Q Anything else?

22 A That's the ones that I can remember offhand, but there are
23 likely others.

24 Q Okay. Can you tell me very quickly what each of those
25 software programs do; in a general sense, just your familiarity

1 first.

2 A Sure. The LOCUS -- well, if you could help me out and just
3 let me know which ones you'd like in what order.

4 Q Start with LOCUS.

5 A LOCUS. Okay. LOCUS is a program that houses information
6 regarding repossession of vehicles and the charges associated
7 with it.

8 THE COURT: Who designed LOCUS?

9 THE WITNESS: It's my understanding that that's an
10 internal proprietary system.

11 THE COURT: Okay.

12 BY MR. SHENKAN:

13 Q Is it exclusively for repossession related information?

14 A That's the only capacity in which I understand it, yes.

15 Q Okay. Shaw?

16 A The accounting system.

17 THE COURT: Who designed that?

18 THE WITNESS: I'm not certain of that.

19 THE COURT: Is that off the shelf or internally
20 designed; do you know?

21 THE WITNESS: I'm not certain.

22 THE COURT: Okay.

23 BY MR. SHENKAN:

24 Q AutoIMS?

25 A AutoIMS is a web-based program that's used between the bank

1 and the -- the repossession agents and resale agents to track the
2 movement of the vehicle during repossession and all the way
3 through the sale.

4 THE COURT: Is that internally designed or is that off
5 the shelf?

6 THE WITNESS: No, that's an external web based program.

7 THE COURT: Okay.

8 BY MR. SHENKAN:

9 Q C-A-C-S CAFE?

10 A CACS CAFE, that's another system tracking information about
11 the vehicle, information about the -- the collection efforts that
12 have gone into deficient loans.

13 THE COURT: Is there some material distinction between
14 the information collected on CACS CAFE and AutoIMS?

15 THE WITNESS: There is.

16 THE COURT: What's the difference?

17 THE WITNESS: The collection effort is done primarily
18 in CACS CAFE, whereas the repossession efforts, and
19 reconditioning, and sale of the vehicles is what AutoIMS handles.

20 THE COURT: All right.

21 BY MR. SHENKAN:

22 Q On-Demand?

23 A On-Demand houses monthly statements.

24 THE COURT: Again, is that an in-house or off the shelf
25 purchase from a vendor?

1 THE WITNESS: Yeah, I'm not certain. I'm sorry, Judge.

2 THE COURT: Okay.

3 BY MR. SHENKAN:

4 Q How about SharePoint?

5 A Microsoft SharePoint. That's a Microsoft product. It's a
6 document management system, document repository, among other
7 things, but that's --

8 Q Is that what you use for mail merging notice of repossession
9 of Post-Sale Notices?

10 A SharePoint?

11 Q SharePoint.

12 A No, that would not be.

13 Q What's used for that?

14 A To mail merge and generate statements?

15 Q Mail merge and generate notices of repossession of Post-Sale
16 Notices. Are you familiar with those terms?

17 A I am.

18 THE COURT: And the question is, which software program
19 is used to mail merge, to generate notices of repossession or
20 NORs, or Post-Sale Notices, correct?

21 MR. SHENKAN: Yes, sir.

22 THE COURT: Very well. Go ahead.

23 THE WITNESS: I don't recall. I'd have to check my
24 notes on that.

25 BY MR. SHENKAN:

1 Q Do you have your notes?

2 A I do not.

3 Q Why didn't you bring your notes?

4 MR. PARKER: Objection, Your Honor. This is not
5 appropriate for counsel to be asking that.

6 THE COURT: Well, why he doesn't bring his notes. Why
7 don't we ask this question? Where are your notes? Are they
8 here?

9 THE WITNESS: They are not.

10 THE COURT: Okay. So, you don't have your notes with
11 you?

12 THE WITNESS: I do not.

13 THE COURT: Very well. You may proceed, counsel.

14 BY MR. SHENKAN:

15 Q With respect to your notes do you recall a conversation that
16 we had during the discovery conference where you had offered to
17 provide your notes to me?

18 A I recall having a conversation regarding the notes. I do
19 not recall offering to -- to supply them.

20 Q What are your notes about?

21 A My notes generally cover just my visit at the bank that
22 I -- I actually went to the bank to learn about these systems
23 back in June and took notes.

24 THE COURT: June of this year?

25 THE WITNESS: That's correct.

1 THE COURT: So, you have some notes. How extensive are
2 they?

3 THE WITNESS: They're fairly barebones, just so that I
4 can understand --

5 THE COURT: I mean are they five pages, 100 pages, some
6 ballpark.

7 THE WITNESS: Oh, two to three pages.

8 THE COURT: Two to three pages of notes. Okay. I'll
9 direct that counsel for the Defense review the notes for the
10 potential of any attorney-client privilege but subject to that
11 review that they be turned over at once.

12 MR. PARKER: Yes, Your Honor.

13 BY MR. SHENKAN:

14 Q FileNet is the next program. Thank you.

15 A FileNet houses retail installment contracts. More or less
16 anything that's collected at the time the loan is initiated.

17 Q So, is it limited to the time the loan is initiated only or
18 is it --

19 A That's the -- the main purpose that I understand it, as it
20 relates to this case.

21 Q The reason why I ask that, is I have some references and
22 policies that I can show you --

23 A Uh-huh.

24 Q -- that say that that is where all of the letters that are
25 sent out are housed.

1 A Okay.

2 Q Does that comport with your understanding? When I say
3 letters, I say notice of repossession, Post-Sale Notices, actual
4 copies of those notices are scanned in and housed in FileNet.

5 A That would make sense to me, yes.

6 Q So it's not just limited to the inception of the loan --

7 A No.

8 Q -- it's all documents that were --

9 A That would make --

10 Q -- sent to the -- copies of all letters that are sent to the
11 putative class members would be housed in media form and filed;
12 is that right?

13 A I couldn't say for certain, but that does make sense to me.

14 THE COURT: Let me ask why does that make sense to you?

15 THE WITNESS: It would -- it would make sense in that
16 the information about the loan, the documents about a loan, are
17 housed in that system, so keeping any efforts and correspondence
18 regarding that loan would make sense to also be in that system.

19 THE COURT: Is there overlap with some other system in
20 terms of loan documentation?

21 THE WITNESS: There are monthly statements that are On-
22 Demand.

23 THE COURT: Okay. So, there would be some overlap with
24 On-Demand. Particularly, On-Demand would have monthly
25 statements?

1 THE WITNESS: It's -- yeah, it's likely.

2 THE COURT: Okay. Go ahead, counsel.

3 BY MR. SHENKAN:

4 Q So, if I were to ask you to provide me with all of the
5 notices of repossession or Post-Sale Notices of the entire
6 putative class, would you be able to access those, to the best of
7 your understanding of their systems, in FileNet?

8 A To the best of my understanding, yes, that makes sense.

9 Q Have you ever been -- have you ever had a chance to look
10 through FileNet for any client to confirm that, or any customer,
11 a putative class number?

12 A I'm not certain. Are you asking me if I have operated that
13 system?

14 Q Have you operated that system?

15 A I have not personally operated that system.

16 Q So, the knowledge that you obtained with respect to the
17 FileNet software has been acquired how?

18 A During an on-site visit at the bank.

19 Q And that was one on-site visit in June?

20 A That was two -- two days. One visit over two days, yes.

21 THE COURT: Who did you visit with?

22 THE WITNESS: I met with five different individuals,
23 Ken Fries, Jennifer Thompson, Randy Surface.

24 THE COURT: Randy Surface, spelled the ordinary way,
25 Surface?

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 THE WITNESS: Tom Thornton.

4 THE COURT: Thornton?

5 THE WITNESS: Thornton, I believe, yeah. Again, I'm
6 going from memory.

7 THE COURT: Okay.

8 THE WITNESS: And then Matt Brazinski (phonetic).

9 THE COURT: Matt Brazinski.

10 THE WITNESS: Yeah.

11 THE COURT: And you met with each of them the two
12 different visits or did you meet with them --

13 THE WITNESS: No.

14 THE COURT: -- in different visits?

15 THE WITNESS: I met with three of them on one day and
16 two on the other.

17 THE COURT: Which three did you meet on the first day,
18 if it was the first day that you met three people?

19 THE WITNESS: I believe it was three and then two. The
20 first day it was Tom, Jennifer, and Randy.

21 THE COURT: Uh-huh.

22 THE WITNESS: Then I believe I met with Ken and Matt
23 the following day.

24 BY MR. SHENKAN:

25 Q How long did you meet with Jessica, Randy -- or Jennifer,

1 Randy, and Tom on the first day?

2 A All in three hours.

3 Q And the second day you met with Ken Fries and Matt
4 Brazinski?

5 A Correct.

6 Q And how long did you meet with them?

7 A All in probably two hours.

8 THE COURT: Were these two successive days or --

9 THE WITNESS: They were, yeah.

10 THE COURT: -- separate? Okay.

11 BY MR. SHENKAN:

12 Q Do you recall the date?

13 A Possibly June 12 and 13, is what sticks out to me.

14 Q And your notes would reflect your communications with these
15 people during those two days?

16 A A very high level, but, yes.

17 Q Now, what did they tell you to do with respect to the
18 discovery that I had propounded?

19 A I don't understand who -- who is they and --

20 Q They are these five -- these five people. You met with
21 someone for five -- you met with them a total of about five
22 hours. So, I'm just asking what is the substance of that
23 communication with respect to the discovery that I served; have
24 you ever seen the discovery that I served?

25 A The --

1 Q Have you ever seen my discovery, my first set of post
2 removal discovery? Have you ever actually seen a document?

3 A The filing? I have.

4 Q It wasn't a filing, it was discovery.

5 A I'm sorry, I'm not sure I understand what you're asking me.
6 If you can show me what you're asking me.

7 THE COURT: Have you seen what's designated as a set of
8 interrogatories?

9 THE WITNESS: Yes.

10 THE COURT: Have you seen a set of request for
11 production of documents?

12 THE WITNESS: I have, yes.

13 THE COURT: Okay. Are those the post removal discovery
14 that counsel is talking about?

15 MR. SHENKAN: Yes.

16 THE COURT: Okay. So, you have seen a set of
17 interrogatories and you have seen a set of requests for
18 production?

19 THE WITNESS: Yes. And I have seen responses to those,
20 yes.

21 THE COURT: Okay.

22 BY MR. SHENKAN:

23 Q When's the first time that you saw that document? Was it
24 after -- was it before or after our e-Discovery conferences?

25 THE COURT: First, when was the e-Discovery conference?

1 THE WITNESS: There were two. One, I believe in late
2 June and one in early July.

3 THE COURT: And then let's proceed with the question
4 counsel posed.

5 THE WITNESS: I saw some documents prior to that
6 conference. I couldn't -- I don't recall which I saw at which
7 times.

8 BY MR. SHENKAN:

9 Q I'm asking you about the discovery; the requests for
10 production of documents and interrogatories.

11 A I understand.

12 Q Have you had a chance to review those documents before the
13 e-Discovery conferences or subsequent to the e-Discovery
14 conferences that were provided to you for review?

15 A I don't recall when I actually reviewed that -- that
16 information. I don't recall.

17 THE COURT: Do you recall actually reviewing the
18 documents? Other than just seeing them, did you actually have a
19 chance to read through the interrogatories?

20 THE WITNESS: That I did, yes.

21 THE COURT: Did you have a chance to read through the
22 requests for production?

23 THE WITNESS: I did.

24 THE COURT: Did you have a chance to read through the
25 responses to the interrogatories?

1 THE WITNESS: I did.

2 THE COURT: And how about the requests for production,
3 did you review the documents and the responses to the requests
4 for production?

5 THE WITNESS: I believe so, yes.

6 THE COURT: Okay. Counsel, you may proceed.

7 BY MR. SHENKAN:

8 Q What did you do with respect to the production of documents
9 that were provided to you?

10 A Well, there have been multiple sets of production, so I'm
11 not sure which ones -- I had different roles in different sets of
12 these.

13 Q How many -- well, let's just talk about your roles. What
14 roles did you play and when, roughly?

15 A The initial productions were provided prior to me being
16 engaged as e-Discovery liaison. With respect to anything outside
17 of the email production that was -- that was done I believe in
18 May, I have -- I haven't had any direct involvement in gathering
19 those documents. I've reviewed them all, but I haven't -- I
20 didn't have any -- any hand in -- in gathering that information.
21 For the email -- specifically the email production --

22 Q The email production, excuse me for interrupting. To just
23 clarify for the Judge's sake, you're talking about the 19,000
24 pages that we're all talking about, right?

25 A Yes.

1 Q The 19,000 page production, were you provided that
2 information on a flash drive or external hard drive in raw data
3 form?

4 A Oh, the raw data was transferred to us electronically.

5 Q What did the raw data consist of?

6 A PST files. PST files.

7 Q What is that?

8 A That is a Microsoft mail container, an Outlook data file.

9 Q And how many files were there?

10 A How many files -- how many files were --

11 Q How many files were transferred to you?

12 A -- how many individual PSTs or how many mail messages were
13 there?

14 Q Why don't you provide me with both? How many PST files were
15 there?

16 A How many PSTs? Possibly 20 to 25.

17 Q And how many email merge files was there?

18 A I don't know of any mail merge files, but there's --

19 Q I don't know if that was the term. You said emails. How
20 many --

21 A Actual emails and attachments, approximately 35,000.

22 Q Well, I'm talking about raw data. Are you telling me there
23 were emails with -- there were 35,000 emails? Including
24 attachments, that there were 35,000 of them?

25 A Uh-huh.

1 THE COURT: And when you are saying -- just so that I'm
2 clear about your terminology, when you're saying there's 35,000
3 emails, are you saying that there are 35,000 separate documents
4 that could be denominated as separate email or 35,000 threads --
5 email threads?

6 THE WITNESS: There's 35 -- 35,000 total documents.

7 THE COURT: Okay.

8 THE WITNESS: There's approximately 25,000, what I
9 would call a parent email.

10 THE COURT: Uh-huh.

11 THE WITNESS: And then the balance would be the number
12 of attachments to those emails.

13 THE COURT: Approximately.

14 THE WITNESS: So --

15 THE COURT: So, doing the rough math, there's
16 approximately 25,000 parent emails, and there are additional
17 progeny emails or offspring emails that are attached to those
18 parent emails; is that right?

19 THE WITNESS: No. Documents attached to the emails.

20 THE COURT: Documents attached to the emails. Okay.

21 BY MR. SHENKAN:

22 Q Now, those documents were -- were some of those documents
23 Excel spreadsheets?

24 A Yes, they were.

25 Q Now, I understand that the -- it's common state of the art

1 using e-Discovery is to produce Excel spreadsheets in their
2 native format. Would you agree that that is the industry
3 standard?

4 MR. PARKER: Your Honor, I object to that as to Mr.
5 Kaminski speaking to the industry standard with respect to native
6 format of Excel documents. Certainly, if Mr. Kaminski can
7 answer, he can, but --

8 THE COURT: I'll -- yeah, he can answer the question as
9 to his understanding.

10 THE WITNESS: Okay. My understanding is, in general,
11 Excels can and are often produced in their native format with
12 the -- the main reason for not doing so would be the need to
13 apply redactions to the document.

14 BY MR. SHENKAN:

15 Q What you did in this case, the format that you used -- and
16 I'll ask you about that, but before I do, have you had a chance
17 to read -- you said you read the Judge's order. When's the first
18 time that you read the Judge's order?

19 THE COURT: Are you referring to the document number
20 6-1 --

21 MR. SHENKAN: Yes, Your Honor.

22 THE COURT: -- from the ECF?

23 MR. SHENKAN: Yes, Your Honor.

24 THE COURT: Very well. That's the order of November
25 1st of 2017. Go ahead.

1 THE WITNESS: I'm not certain without understanding the
2 substance of what you're --

3 BY MR. SHENKAN:

4 Q When's the first time that you saw this Court order? This
5 e-Discovery Court order that's been marked as 6-1 -- document 6-
6 1?

7 A I'd have to take a look, and I can probably tell you.

8 THE COURT: Why don't I give the witness my copy
9 since --

10 MR. SHENKAN: I've got it right here.

11 THE COURT: Okay. Very well.

12 THE WITNESS: This was one of the first documents I
13 reviewed when I was engaged as liaison.

14 MR. SHENKAN:

15 Q I'm going to direct your attention to paragraph seven.

16 A Okay.

17 Q Would you read the first sentence to yourself and let me
18 know when you're done?

19 MR. PARKER: And, Your Honor, this is -- this is the
20 version that I don't have. I was given only pages one, three,
21 and five.

22 MR. SHENKAN: It was given.

23 MR. PARKER: Yeah, I know, but I don't have it.

24 MR. SHENKAN: You don't have the order with you?

25 THE COURT: Very well.

1 MR. PARKER: If you're using it as an exhibit, I think
2 it's appropriate for you to give me what you're handing the
3 witness as an exhibit.

4 THE COURT: Yes, it is. It would be appropriate.

5 (Pause)

6 THE WITNESS: I'm done.

7 BY MR. SHENKAN:

8 Q Okay. It says that documents should be -- Excel documents
9 should be produced in their native format; would you agree with
10 that?

11 A I do see where it says that, yes.

12 Q And if you had that understanding before you made the
13 production, why did you make the production not in the Excel
14 native format?

15 A Because there's no way to apply redactions to a live Excel
16 document without altering the document.

17 Q When you say altering the documents, what alterations are
18 you talking about?

19 A You'd need to delete content from the Excel spreadsheet in
20 order to apply a redaction.

21 Q Okay. And who told you to do the redactions?

22 A I didn't apply the redactions.

23 Q Who did apply the redactions?

24 A The people reviewing and -- the people reviewing the
25 documents.

1 THE COURT: Do you know who those people were?

2 THE WITNESS: I believe it was counsel.

3 THE COURT: Are you sure?

4 THE WITNESS: I'd have to look at the history of the
5 documents in the system to verify, but I -- I don't recall
6 creating log-in credentials for anyone else --

7 THE COURT: All right.

8 THE WITNESS: -- so I would say reasonably sure.

9 THE COURT: So, you created log-in credentials for
10 counsel as part of your duties?

11 THE WITNESS: I did.

12 THE COURT: All right. And they alone had the log-in
13 credentials for the documents that were to be produced?

14 THE WITNESS: Outside of -- they were the only ones
15 outside of me and my team, obviously, as system admins --

16 THE COURT: Very well.

17 THE WITNESS: -- yes.

18 THE COURT: Okay. Counsel, you may proceed.

19 BY MR. SHENKAN:

20 Q So, the PST documents that you received, those documents
21 were already redacted; is that right?

22 A No.

23 Q Okay. Can you tell me what documents you received that were
24 redacted?

25 A In raw form?

1 Q In raw form.

2 A None.

3 Q So, I want to just be clear. Who did the redactions?

4 A The -- the people --

5 Q So, that's --

6 A -- reviewing the document, it would be counsel.

7 Q Okay. I see. I see. So, you provided counsel with the
8 information, and they then did their own redactions?

9 A As part of their review, yes.

10 Q And did you participate in any form in doing the redactions?

11 A I did not.

12 Q And one of the things that the e-Discovery liaison, I
13 understand, is to do is to -- let me start over. Let me ask you,
14 sir. Did you say at all to anybody, listen, I saw this order --
15 I saw paragraph seven of this order, and it says Excel
16 spreadsheets should not be -- should be provided in native
17 format, is of concern to me? Did you ever tell that to anybody,
18 express that concern?

19 MR. PARKER: Objection, Your Honor. This is getting
20 argumentative.

21 THE COURT: No, it's a question. You can answer the
22 question. Overruled. The only question, as I understand it, is
23 did you tell anybody, hey, the order says produce Excel in its
24 native format. Did you have that conversation with anybody?

25 THE WITNESS: We -- yeah, I did have that conversation

1 with counsel as to the format for production.

2 BY MR. SHENKAN:

3 Q And why didn't you produce it in native format?

4 A Because redactions needed to be applied to the document.

5 Q Okay. Did you ask if it was Court ordered that permitted
6 redactions?

7 A I did not.

8 Q Do you know if there's a Court order that permits
9 redactions?

10 A I did -- I do not know.

11 Q Do you know that there was a confidentiality stipulated -- a
12 stipulated confidentiality agreement in this case that was rather
13 detailed, it was eight pages? I'm going to show that to you.
14 Have you ever seen this? It's Document Number 22.

15 THE COURT: You should provide a copy to opposing
16 counsel and to me.

17 MR. SHENKAN: Certainly.

18 THE COURT: Thank you. This is ECF document number 22,
19 not Exhibit 22, just for the record. And the question, Mr.
20 Kaminski, is whether you read this document previously.

21 THE WITNESS: I don't recall.

22 BY MR. SHENKAN:

23 Q Do you know if you've ever been provided with that copy?

24 A I would have to check the files that I've received.

25 Q Let's talk about the files that you received; what would

1 they consist of? Your notes, obviously. Five pages of notes.

2 What other documents that are in your file?

3 A Various court documents similar to the ones you handed me.

4 Q Do you have that here today, your file?

5 A I do not.

6 Q Were you involved in any document production, other than
7 this 19,000 page production that we were referencing through the
8 Relativity software package?

9 A I'm not -- involved in its preparation?

10 Q Yeah.

11 A No.

12 Q And execution. Were you involved in anything else, other
13 than -- other than that one task, scan in or to work with
14 these -- I'm sorry -- these PST files that were provided to you
15 in raw form --

16 A Uh-huh.

17 Q -- the 20 to 25 files --

18 A Uh-huh.

19 Q -- that you worked on --

20 A Uh-huh.

21 Q -- was there any other project that you worked on with
22 respect to the production of documents?

23 A There was not.

24 MR. SHENKAN: I just want to approach.

25 BY MR. SHENKAN:

1 Q I don't need to give you -- I don't need to mark this into
2 evidence, but I just want to --

3 A Uh-huh.

4 Q -- have you look through this. Is this the kind of
5 redactions to the best of your understanding that were done?

6 THE COURT: Counsel represented that's the PST
7 documents that counsel has been speaking of?

8 MR. SHENKAN: I just have them here for demonstrative
9 exhibits --

10 THE COURT: Sure.

11 MR. SHENKAN: I'll take them back.

12 THE COURT: Very well.

13 THE WITNESS: It looks like a full page redaction.

14 BY MR. SHENKAN:

15 Q Okay. So, do you know how many of these pages were actually
16 redacted of those 19,000?

17 MR. PARKER: Your Honor, I'd like to see this, too, if
18 counsel doesn't mind.

19 THE COURT: We're not -- you're not going to go all
20 through it. I'll let you take a look.

21 MR. SHENKAN: It's just for demonstrative reasons.
22 They're all blank copies. They're all redacted copies.

23 THE COURT: I'll take a representation from Mr. Shenkan
24 about what's in those documents. Mr. Shenkan, why don't you just
25 proffer to the Court what's -- what are those documents that

1 you're using as a demonstrative?

2 BY MR. SHENKAN:

3 Q Mr. Kaminski, why don't you tell me what they are?

4 THE COURT: No, counsel, I directed you to tell me and
5 then -- no, counsel --

6 MR. SHENKAN: I'm representing to the Court that these
7 actually were printed documents from the 19,000 Relativity
8 production of documents that were --

9 THE COURT: Received by you?

10 MR. SHENKAN: -- received by me.

11 THE COURT: Very well. Okay.

12 MR. SHENKAN: And I had my paralegal print them out.
13 And these are just -- these are just some of the redacted copies.

14 THE COURT: Okay.

15 MR. PARKER: And, Your Honor, I would just add this
16 doesn't include -- you know, the front page cover of these is
17 supposed to include the column headings for the purposes of
18 demonstration that counsel's using this for. This is really an
19 inaccurate representation of what was actually produced.

20 THE COURT: Well, understood and subject to the
21 objections as to complete accuracy of the entire production.
22 Counsel's representing that the documents he's holding in his
23 hand and using for demonstrative purposes are at least part of
24 the production that he is questioning about. So, counsel, you
25 may proceed.

1 BY MR. SHENKAN:

2 Q Let me ask you -- Mr. Parker raised a good point. You
3 indicated that some of these documents have some information in
4 Excel --

5 A Uh-huh.

6 Q -- is that right?

7 A Yeah. I don't believe every page is fully redacted.

8 Q Well, do you know how many pages actually have data in them
9 of the 19,000 pages --

10 A I don't know offhand.

11 Q Well, what's the reason why people don't want to cut up --
12 or, I'm sorry. Are these TIFF files that you made?

13 A I believe those were produced in PDF.

14 Q PDF. Are you sure that they're PDF, because I --

15 A Oh, they may be TIFF, as well. I mean both are image
16 formats.

17 Q And to the extent that they were TIFFS, and I were to look
18 at them as the recipient --

19 A Uh-huh.

20 Q -- I would have to open up every single page separately;
21 isn't that right?

22 A That would depend primarily on the program being used to
23 view the documents.

24 Q The program being used is, is I click and -- click the
25 scroll bar on one of the documents I opened it up. I had to open

1 up each one separately. The way that it was provided to me by
2 you would require me to open up each one separately; isn't that
3 right?

4 A Again, it depends on what program you were using to access
5 those documents.

6 Q What program did you provide to me? In what form were
7 these -- was this information provided to me?

8 A TIFFs were provided, so that would be a concordance style
9 load file, pretty much industry standard, along with accompanying
10 data and Opticon files.

11 Q When you say the industry standard, are you saying industry
12 standard to convert Excel spreadsheets and TIFFS?

13 A When redactions are necessary, yes, it's very common.

14 Q Why is it that you can't redact -- why can't you do your
15 filter in Excel and simply erase or block out all of the columns
16 and rows that might not apply to the subject matter that's being
17 sought and provide it to the person in native format? Why
18 couldn't you do that?

19 A That would involve -- I do. That would involve inherently
20 changing the -- you'd have to alter the document.

21 Q You altered the document here because you cut it up.

22 A Yes, I converted it to TIFF.

23 Q Okay.

24 A But I didn't alter the -- I didn't deliver you something
25 that would represent an Excel file in its -- in its raw original

1 format.

2 THE COURT: Mr. Kaminski, let me ask you a question.

3 THE WITNESS: Certainly.

4 THE COURT: If you took the Excel and you removed the
5 offending or other data, the chaff data that wasn't necessary to
6 produce, you could make a working copy of the existing Excel and
7 modify the working copy of the Excel and obtain the same result
8 by redacting in that fashion. And, obviously, you would have to
9 produce a document that's clearly denominated as a working copy
10 that's been redacted; is that correct?

11 THE WITNESS: Absolutely, sir.

12 THE COURT: You could do that?

13 THE WITNESS: Absolutely --

14 THE COURT: Okay.

15 THE WITNESS: -- you can delete rows and indicate the
16 presence of redactions that way by merging cells.

17 THE COURT: Okay. And let me try and cut this to the
18 chase, then. Counsel, Mr. Shenkan, is production in that fashion
19 superior in your mind in terms of your capacity to search the
20 document to the methodology that was utilized by making TIFF
21 shots, essentially, of each document?

22 MR. SHENKAN: Certainly.

23 THE COURT: Very well. Then I'm going to order that
24 the Excel document in its native format be preserved, but the
25 working copy be prepared and that the redactions that were

1 previously done by TIFF be done by actually modifying the Excel
2 working copy and that the working copy be produced to Mr.
3 Shenkan. How much time is that going to take, Mr. Kaminski, do
4 you think?

5 MR. PARKER: We're talking tens of thousands of
6 documents here, Your Honor.

7 THE COURT: Yeah. How much time did it take to produce
8 the TIFFS?

9 THE WITNESS: That production I believe took a couple
10 of days on my end to -- to prepare.

11 THE COURT: Two days -- two to three days on your end?

12 THE WITNESS: Sure.

13 THE COURT: How much time for other employees of the
14 bank or other vendors? Were there any other persons involved in
15 producing the TIFFS out of the Excel?

16 THE WITNESS: Oh, that was my team, and I would be
17 involved in that two to three days.

18 THE COURT: Okay. How many people involved?

19 THE WITNESS: Three to four.

20 THE COURT: Three to four?

21 THE WITNESS: Three to four people working on it.

22 THE COURT: Okay. For two to three days full time?

23 THE WITNESS: Uh-huh. Oh, no, not full time. It's
24 primarily machine time that we're talking about here.

25 THE COURT: Okay.

1 THE WITNESS: However, I will say that the production
2 of -- of the spreadsheets and the alteration creating the working
3 copy you suggest is a much more manual process --

4 THE COURT: And that would have to be --

5 THE WITNESS: -- whereas creating images --

6 THE COURT: -- the redactions in the Excel working copy
7 would have to be accomplished, as you're describing it, largely
8 by counsel who's doing the redacting; is that correct?

9 THE WITNESS: Correct, but that's automated. If
10 I -- let's say I want to redact pages 1 to 1,000, I can -- that's
11 a -- that's a five second task.

12 THE COURT: Okay. All right. I'm going to order that
13 that be accomplished.

14 UNIDENTIFIED SPEAKER: Uh-huh.

15 THE COURT: Counsel for the Defense, you can advise me
16 about a timeframe for accomplishing the redactions in an Excel
17 format as opposed to the TIFF format that's been previously
18 utilized, and I'll allow you to supplement and advise me by some
19 sort of letter or otherwise about how much time is going to be
20 necessary to accomplish that, okay?

21 MR. PARKER: Yes, Your Honor.

22 THE COURT: Very well.

23 BY MR. SHENKAN:

24 Q Mr. Kaminski, in the production of -- or the conversion from
25 Excel to this TIFF files, all of the metadata is erased; is it

1 not?

2 A No. No, it's not.

3 Q So, can I look at the Excel spreadsheet metadata through the
4 TIFF files?

5 A No.

6 Q Why not?

7 A Because that's not the Excel, that's the TIFF file. Those
8 are TIFF files.

9 Q So, in other words, your conversion also stripped the
10 metadata?

11 A It did not.

12 Q It did not.

13 A That is -- no.

14 THE COURT: Does the TIFF file -- can the TIFF file
15 disclose the metadata from the Excel file?

16 THE WITNESS: It cannot.

17 THE COURT: Okay. So, once you create a TIFF file, it
18 doesn't reproduce the metadata that's still existing in the Excel
19 file; is that correct?

20 THE WITNESS: That's correct.

21 THE COURT: Okay. So, the -- the metadata does exist
22 somewhere, it exists in the original Excel file?

23 THE WITNESS: Absolutely.

24 THE COURT: Would the metadata be preserved in the
25 methodology that we just discussed, which is producing a working

1 copy of the Excel spreadsheets and then redacting those? Would
2 the metadata still be available for those documents that have
3 survived the redaction process?

4 THE WITNESS: Not from the working copies.

5 THE COURT: Uh-huh.

6 THE WITNESS: It would still be preserved on the
7 original.

8 THE COURT: Okay. How would the metadata be produced
9 most logically from the original?

10 THE WITNESS: If the -- the metadata could be gleaned
11 from the -- it's all fielded information --

12 THE COURT: Right.

13 THE WITNESS: -- in the hosted platform, so a CSV, a
14 DAT file, whatever's -- some sort of delimited (phonetic) file.

15 THE COURT: Okay. So, it's possible to glean the
16 metadata from the Excel -- the original Excel file and produce
17 that in comprehensible format?

18 THE WITNESS: Yes.

19 THE COURT: Is it also possible that the person reading
20 that metadata that has been gleaned from the original Excel is
21 going to be able to relate the metadata to the individual files
22 that are produced in the working Excel?

23 THE WITNESS: Yes.

24 THE COURT: Okay. So, I would direct that that be
25 accomplished.

1 MR. SHENKAN: May I approach, Your Honor?

2 THE COURT: Yes.

3 MR. PARKER: Your Honor, before that -- I mean I would
4 object to that. There's no requirement the metadata actually be
5 produced in conjunction with any of these electronic discovery.
6 It's required to be preserved, not produced. Counsel hasn't
7 demonstrated in any way that the production of metadata is
8 required here.

9 MR. SHENKAN: Well --

10 MR. PARKER: Let me finish, please.

11 THE COURT: Go ahead.

12 MR. PARKER: There's no requirement the metadata be
13 produced. The order doesn't say that, counsel hasn't
14 demonstrated the need for it, so I would actually object to that
15 -- that particular instruction or at least be given the
16 opportunity to brief it.

17 THE COURT: And the objection is, as I understand it,
18 is essentially -- is it relevance?

19 MR. PARKER: Yes.

20 THE COURT: So, it's discovery relevance. That that's
21 the standard that I'm asked to apply, is whether the metadata for
22 documents produced is relevant?

23 MR. PARKER: Yes. Relevant, and it's unduly
24 burdensome, very costly. There's no need for it.

25 THE COURT: To produce the metadata, as opposed to --

1 MR. PARKER: Oh, I'm sorry, Your Honor.

2 THE COURT: -- to produce the metadata, as opposed to
3 the substance of the documents is additional and burdensome?

4 MR. PARKER: Yes.

5 THE COURT: Okay. I'm not really buying that much, but
6 I'll allow you to explain to me, in some detail, why production
7 of the metadata for individual documents that themselves are
8 relevant to the -- for discovery purposes would be somehow
9 categorically irrelevant themselves. I'll also allow you to
10 address the burdensomeness issue, in some detail, because just
11 saying it's burdensome or it would involve a lot of work is
12 really insufficient for me to make a burdensomeness --

13 MR. PARKER: Yes, Your Honor.

14 THE COURT: -- or disproportionality assessment. And
15 if you're -- you know, if you're talking about a million hours to
16 do this then, yes, that sounds burdensome. If you're talking
17 about 29 hours to do it, that doesn't sound too burdensome, but
18 both are burdensome. I mean both involve additional activity.

19 So, I'll allow you to address those two issues with
20 respect to the metadata, and I'll allow Mr. Shenkan to respond.
21 What kind of timeframe are you going to need to adequately
22 address that?

23 MR. PARKER: That I think we could address pretty
24 quickly.

25 THE COURT: So, I'll say within seven days. And within

seven days what I'm looking for is for counsel to address the objections as they've been formulated here -- on the basis of the objections that they've been formulated here, which is we're talking about producing the -- and I've already ordered the production of the underlying emails and so forth in Excel format in a working copy, but the specific issue is the metadata for those Excel documents that are being produced in the working copy. And the issue is how much time, and effort, and expense is it going to take to produce the metadata and also what's its relevance.

MR. PARKER: Yes, Your Honor. Thank you.

THE COURT: Thank you.

MR. SHENKAN: Your Honor, very quickly. On my reading and interpretation of paragraph two of Judge Beetlestone's order, she's already addressed this issue for purposes of Excel spreadsheets.

THE COURT: Uh-huh.

MR. SHENKAN: And the Excel spreadsheet, when it's made, has metadata in it.

THE COURT: I understand, counsel, and I understand that metadata in my experience --

MR. SHENKAN: Okay.

THE COURT: -- is usually produced. I'm going to allow counsel for the bank to tell me why the metadata is not relevant somehow. If counsel's representing at this point -- I'm not

1 going to get into a long hash here, but if counsel is insisting
2 that somehow, it's not relevant, then we'll have a go at it, but
3 it's not going to be a long go. We'll get this done.

4 BY MR. SHENKAN:

5 Q Mr. Kaminski, could you tell me what is involved and what is
6 included in the metadata files that we're talking about?

7 A That's a -- that's a broad question. There's any number of
8 information, but I guess simply put, metadata is automated
9 information capture or created at the time a file is created
10 relevant to its creation date, location, formatting, and -- and
11 other properties of the file.

12 Q So, let's talk about that, the creation date and
13 formatting --

14 A Uh-huh.

15 Q -- of the file.

16 A Uh-huh.

17 Q All of that right now is in the Excel spreadsheets as raw
18 data, the original?

19 A Yeah. Uh-huh, yeah, it is.

20 Q So, you would actually have to go and remove that metadata
21 from the raw file for it not be provided to me. Someone would
22 have to do that; is that right?

23 A I'm not certain I understand what you're asking.

24 Q Is it an effort -- is it an additional effort to remove the
25 metadata from the Excel spreadsheets? What effort is involved in

1 removing the metadata from the Excel spreadsheets?

2 A In metadata scrubbing --

3 Q Scrubbing.

4 A -- it's a -- you'd have to have a program to -- to execute
5 that.

6 Q What program do you use to have access to the metadata
7 scrubbing on the Excel spreadsheets?

8 A I think the last time -- it's been awhile since I've used a
9 scrubbing program. There's -- I believe there's one called
10 Metascrubber (phonetic) or something to that effect.

11 Q What would be the reason to remove metadata from a document?

12 A The only time I've ever done it is for purposes of -- of
13 production, but again that's been quite some time.

14 Q Since 2005, and I assuming you've worked on thousands of
15 e-Discovery projects.

16 A Oh, yeah, certainly.

17 Q Could you tell me, and tell the Judge, and everybody, how
18 many times have you been asked to actually scrub the metadata
19 from the documents that you produce?

20 A Just a handful.

21 THE COURT: Counsel, I want to lay my cards on the
22 table. I am not looking favorably at the notion of scrubbing the
23 metadata, not at all. I'm -- I'm somewhat familiar with --

24 MR. SHENKAN: Okay.

25 THE COURT: -- with the drill.

1 MR. SHENKAN: Okay.

2 THE COURT: And I am highly dubious of the notion that
3 the metadata are somehow exempt from ordinary discovery, but I'm
4 allowing the Defense to say their peace and --

5 MR. SHENKAN: I want to be as efficient as possible.

6 THE COURT: I understand.

7 MR. SHENKAN: And I don't mean to belabor the topic, I
8 really don't.

9 THE COURT: I understand. And if you have a few more
10 questions on the subject, I'm fine with that, but I'm just laying
11 my cards out there, so you know that the fact finder is already
12 highly dubious of the notion that we're not going to produce
13 metadata because somehow it is not relevant or expensive.

14 BY MR. SHENKAN:

15 Q Could you tell me, this relates to the 19,000 page
16 production --

17 THE COURT: And this is a document that you've just
18 produced, which is three pages, and if counsel could describe it
19 for the record if you're not going to mark it as an exhibit.

20 MR. SHENKAN: I'd like to mark it as Exhibit 1.

21 THE COURT: Very well.

22 (Plaintiffs' Exhibit 1 marked for identification)

23 THE COURT: And what is Exhibit 1? Just a brief
24 description before we get started.

25 MR. SHENKAN: A brief description is its load files --

1 part of a load file.

2 THE COURT: What's that?

3 MR. SHENKAN: It's part of a load file, and it shows
4 pretty much an inventory of what the 19,000 page files were.

5 THE COURT: I see. Okay.

6 BY MR. SHENKAN:

7 Q That's what my understanding is, but I'll ask you to confirm
8 my --

9 THE COURT: Very well. And so, the question's directed
10 to Mr. Kaminski at this point.

11 THE WITNESS: It's the entirety of the load file
12 provided for that deliverable.

13 BY MR. SHENKAN:

14 Q And how many files is there?

15 A How many files what?

16 Q How many files are referenced in this document that's been
17 marked as Plaintiffs' Exhibit 1, and it shows the inventory of
18 the deliverable that we're talking about, this 19,000-page
19 deliverable.

20 A It appears to be 57.

21 Q And how many Excel spreadsheets are in there?

22 A I can't tell from this file.

23 Q Why not?

24 A There's no reference to -- since no native files were
25 produced, there's no reference to a native file in this load

1 file.

2 THE COURT: There was no reference to a native Excel
3 file?

4 THE WITNESS: Correct.

5 THE COURT: Okay.

6 THE WITNESS: There's no reference to any native file
7 actually.

8 THE COURT: Okay.

9 MR. SHENKAN: May I approach, Your Honor? I'd like to
10 give these -- I'd like to mark this next exhibit as Plaintiffs'
11 Exhibit 2.

12 THE COURT: Very well.

13 (Plaintiffs' Exhibit 2 marked for identification)

14 BY MR. SHENKAN:

15 Q I understand from my e-Discovery liaison that this is called
16 a TAD file, and it also reflects the 19,000 page deliverable.
17 Mr. Kaminski, is this a TAD file?

18 A No, it is not. It's an Opticon file. It's a portion of an
19 Opticon file.

20 THE COURT: What's an Opticon file?

21 BY MR. SHENKAN:

22 Q Okay. What is an Opticon file?

23 A An Opticon file is an image load file.

24 Q And what does this show you?

25 A This shows me the first two -- well, the first document and

1 then the first few pages of the second document.

2 THE COURT: Of the production of the 19,000 page
3 production --

4 THE WITNESS: Yes, sir.

5 THE COURT: -- or are you talking about something else?
6 Okay. Thank you.

7 BY MR. SHENKAN:

8 Q So, does the first 1675 -- does that say the first page from
9 1675 to the one file and 1676 to the next, I'm looking over to
10 the right column, is that file then 6,235 pages?

11 A That second file is, yes. That's correct.

12 Q Incidentally, making the TIFF files, doing the conversion
13 from an Excel spreadsheet, I would use eight-and-a-half by eleven
14 paper, but some of these Excel spreadsheets are rather
15 voluminous, and they're much larger than eight-and-a-half by
16 eleven, right?

17 A They are.

18 Q So, it's kind of like the information you gave me, I've got
19 a jigsaw puzzle. I've got to somehow find the other pieces that
20 are put in together and actually put the pieces together to try
21 to make my Excel spreadsheet, right?

22 A To?

23 Q To make them align. I mean they're all cut up.

24 THE COURT: Are we talking -- and I'm sorry, counsel,
25 but I just want to understand the context of the question. Are

1 we talking about the 19,000 page, or document, I'm not sure which
2 it is, production that has been the subject of questioning so
3 far?

4 MR. SHENKAN: Yes. Yes, Your Honor. I apologize.

5 THE COURT: And so, the TIFFS that you received, in
6 many instances, as I understand it from your question, were
7 breaking apart native Excel documents into multiple TIFFS; is
8 that what's going on? Is that -- so that I'm understanding --

9 MR. SHENKAN: Yes.

10 THE COURT: -- the question? Okay.

11 MR. SHENKAN: That's the way I understand it.

12 THE COURT: Let me then -- okay. I'm sorry, because
13 I'm just trying to understand the context of the question.

14 Go ahead, Mr. Kaminski and respond to that. Is that
15 the case?

16 THE WITNESS: It's similar to if you would open the
17 Excel file --

18 THE COURT: Uh-huh.

19 THE WITNESS: -- you know, on your computer --

20 THE COURT: Right.

21 THE WITNESS: -- and then hit print.

22 THE COURT: And it's just going to break it up in
23 accordance with however the print is designed to format for the
24 pages that the printer's producing; is that right?

25 THE WITNESS: The system is configured from a page

1 setup standpoint, yes.

2 THE COURT: Okay. All right.

3 THE WITNESS: Yes, correct.

4 THE COURT: All right. I think I understand.

5 BY MR. SHENKAN:

6 Q Mr. Kaminski, if I were to ask you about how to easily
7 extract the information from, let's say, AutoIMS, do you know if
8 there's an extraction tool?

9 A Not to my knowledge, not that I've been made aware of.

10 Q Have you worked with the system, actually worked with the
11 system firsthand?

12 A Have I --

13 Q AutoIMS?

14 A -- physically operated AutoIMS?

15 Q Yes.

16 A I have not.

17 Q So, the systems that we talked about earlier, you haven't
18 physically operated the file that -- you haven't physically
19 operated AutoIMS? Have you physically operated LOCUS yourself?

20 A No.

21 Q Have you physically ever operated Shaw yourself?

22 A No, I've never operated any bank system myself, as I'm not
23 an employee of the bank, but I did spend multiple hours, as I
24 mentioned, reviewing these systems and learning how they operate,
25 and for purposes of me being able to advise on best practices for

1 production and collection.

2 Q And that was during these five -- those five hour meetings?

3 A In addition to other calls that I've had.

4 Q So did you actually have a demonstration? Someone, you
5 know, put up AutoIMS and walked you through it?

6 A Absolutely.

7 Q Was that helpful to you?

8 A It absolutely was.

9 Q Would you agree that that would be helpful for someone like
10 myself to better understand the systems, to actually be able to
11 see them in operation?

12 A I don't know how you learn, I know it's how I learned. I
13 couldn't speculate as to how -- whether it would be helpful for
14 you.

15 Q Let me ask you about -- if I were to ask for an inspection,
16 the opportunity to actually go and just, you know, have someone
17 pull up my own client's information through these systems, how
18 difficult would that be in your eyes to provide that inspection?

19 A I wouldn't -- I wouldn't be able to tell you. I don't know.

20 Q Is there a -- is there a cost involved to having, other than
21 someone operating the system, but if I were to have my e-
22 Discovery liaison, perhaps with your help, do a TeamViewing,
23 would that be something that would be easily provided -- easily
24 able to, with counsel's cooperation, of course, but I'm just
25 asking could this -- could a TeamViewer -- do you know what a

1 TeamViewer is?

2 A Yes.

3 Q What is a TeamViewer?

4 A A remote desktop sharing program.

5 Q Is that something that I could sit in my office in Michigan
6 and you could sit in Buffalo and walk me through the process of
7 how these systems operate through TeamViewer?

8 A I mean I could -- I don't know that I would be the best
9 person to do that because, like I said, I don't put hands on
10 these systems.

11 Q Is that something feasible that could be done?

12 A I would have to defer to the people who would actually be
13 performing that work.

14 Q Based upon your understanding, as eDiscovery liaison, is
15 there any reason why that couldn't be done, limited only to my
16 representative Plaintiffs, who I represent?

17 A Not -- there's no technical limitations that I can -- I can
18 see there.

19 MR. SHENKAN: Your Honor, I would also ask for just the
20 opportunity to do a remote access, or at least brief that
21 opportunity so at least I can get a familiarity with these
22 systems firsthand, similar to what Mr. Kaminski had obtained
23 himself?

24 THE COURT: Any objections, counsel?

25 MR. PARKER: Yes, Your Honor. We strongly object to

1 that. You know, pursuant to -- if Your Honor would like to do a
2 briefing schedule, we're okay with that, but we very strongly
3 object to that, pursuant to Judge Beetlestone's 12/4/17 order
4 governing electronic discovery. Onsite inspections of electronic
5 media under Federal Rule of Civil Procedures 34(b), shall not be
6 permitted absent exceptional circumstances for good cause and
7 specific need have been demonstrated.

8 We would certainly take the position that that sort of
9 intrusive onsite inspection would fall well outside the scope of
10 either good cause or special circumstances.

11 THE COURT: I'm inclined to let you brief it under the
12 same briefing schedule. You can include this issue in your seven
13 day brief.

14 MR. PARKER: Yes, Your Honor.

15 THE COURT: I will say that, as couched so far, I don't
16 -- I'm not quite sure I understand why counsel, looking at his
17 own clients -- I assume you're talking about the representative
18 parties only, just to get a sense of how the software works on
19 TeamViewer -- it quite matches the (indiscernible) that I'm
20 hearing about the intrusiveness of the onsite inspection, but I
21 will certainly let you brief that, and I will let Mr. Shenkan
22 respond.

23 On first blush, it sounds awfully reasonable to me, and
24 I'm just -- I'm not saying I can't be convinced, I just want you
25 to know clearly where I'm coming from. It sounds awfully cost-

1 effective and simple to arrange to me. There may be case law
2 that I'm not aware of, and I'm perfectly willing to be educated.

3 MR. PARKER: Yes, Your Honor.

4 THE COURT: Thank you.

5 MR. PARKER: I understand that. I would appreciate
6 that.

7 THE COURT: Okay.

8 BY MR. SHENKAN:

9 Q Mr. Kaminski, I would like to ask you how these systems are
10 integrated. In other words, I'm not an IT guy, so I see that,
11 you know, they -- you know, in AutoIMS they type in certain
12 information and then in LOCUS certain information. All of that
13 gets filed into something, right?

14 A There are certain integrations in place between some of the
15 systems, yes.

16 Q Why don't you tell me about what those integrations are and
17 how they can easily be accessed most efficiently?

18 A There is a -- there is an update between AutoIMS and LOCUS
19 to sync information at regular intervals, and there's also ties
20 between LOCUSA and Shaw, the accounting system.

21 Q Anything else that's integrated that you know of?

22 THE COURT: Counsel --

23 THE WITNESS: Not that I can recall at this point.
24 Sorry.

25 THE COURT: Go ahead with your answer, Mr. Kaminski.

1 THE WITNESS: Sorry. Not that I can recall at this
2 time.

3 THE COURT: Counsel, I just want to let you know, at
4 12:45 promptly, I have to depart. I have to handle a criminal
5 list, and I have to prepare for the criminal list. So, I'm going
6 to break the parties at 12:45 for -- it should take about an
7 hour-and-a-half, all totaled, so we'll be back an hour-and-a-half
8 after that. And forgive me for not doing the math right away in
9 my head, but we'll figure that out when the time comes. I just
10 wanted to give your forewarning, we have about 45 more minutes as
11 I see it.

12 MR. SHENKAN: Thank you, Your Honor.

13 THE COURT: And I do intend to be done with Mr.
14 Kaminski at that point. We need to move on. I think there's
15 other witnesses that have travel schedules late in the afternoon.

16 MR. PARKER: Yes. Yes.

17 THE COURT: Okay.

18 BY MR. SHENKAN:

19 Q How is it that I can easily access this information in its
20 integrated fashion? What is it called? Is there a document
21 that's called -- let me just back track. If I ask you to provide
22 me with all of the information on Edward Flynn, who is one of my
23 clients --

24 AS Uh-huh.

25 Q -- how is it, in your opinion, based upon your knowledge,

1 that request can easily be provided, if possible?

2 A Easily being the operative word there, I don't know that
3 there's an easy way. Each system would have to be searched
4 individually for that person, and then the information rendered
5 from that system would have to be gathered individually.

6 Q Well, you just indicated that these systems are integrated.

7 A That the information is integrated, the systems, themselves,
8 have different interfaces and contain different information. Not
9 every piece of information -- it sounds like you're asking about
10 redundancies, and redundancies and integration are very
11 different.

12 Q So, if someone at the bank were to ask, I want to get a copy
13 of Mr. Flynn's entire file, everything to do with him --

14 A Uh-huh.

15 Q -- what forensically is done to obtain that information, if
16 you know?

17 A Forensically, there wouldn't be -- collecting from these
18 systems forensically, especially given their proprietary nature,
19 would be fairly complex, but as it pertains to actually gathering
20 information from those systems, you would have to go into each of
21 them individually, run your search and pull it out, as I've
22 mentioned.

23 Q Do you know how much time it takes at all, if you know?

24 A From what -- from conversations I've had, it is my
25 understanding that the gathering of an individual person's files

1 from all these different systems and ensuring that all
2 information is captured, can take up to -- and this -- I'm sorry,
3 this also excludes email, these systems would be about four hours
4 per person.

5 Q Four hours per person. And how is it that you have come to
6 learn that, four hour --

7 A Based on my discussions onsite at the bank, as well as
8 subsequent discussions with the people who actually gathered the
9 information.

10 Q And who did you talk to that was involved in gathering the
11 information?

12 A Well, like I said, I, you know, the five people I met in --

13 Q Anyone else?

14 A -- in Buffalo. Primarily -- primarily those people is my
15 understanding or members of their team, I should clarify.

16 Q Do you -- what you're providing -- have you actually been --
17 have you ever seen the culling of the information, the pulling
18 and extracting of the information for any one in particular, any
19 customer? You've indicated that someone shows you how it works?

20 A Yeah. I was not present when the information was collected,
21 no.

22 Q So you don't have firsthand knowledge as to how long it
23 actually takes to get this information?

24 MR. PARKER: Your Honor, I object to the term firsthand
25 knowledge. I think that's a legalese term. I think he can speak

1 to his knowledge and his experience, but to categorize it as
2 firsthand knowledge or otherwise, I think is inappropriate.

3 THE COURT: It's overruled in light of the fact that
4 it's me that's the fact finder here, and I think we'll do the
5 best we can to make sense of questions and answers. I think the
6 question is reasonably clear and colloquial perhaps, firsthand
7 knowledge, but sufficient so that I can understand the nature of
8 the answer, and so, I'll overrule the objection. The witness can
9 go ahead.

10 MR. PARKER: Yes, Your Honor.

11 THE COURT: I do have a question, though, and it might
12 help to explain it to me, and that is that as I understand the
13 sum of what you've been saying for the last few minutes about the
14 data, it's not as simple as somebody just sitting on a computer
15 one day and saying give me all the information on Mr. Flynn,
16 typing -- search all information on Mr. Flynn and then you get a
17 production; is that right?

18 THE WITNESS: Yeah. Absolutely not. Yeah, that's --

19 THE COURT: And effectively, while the data is shared,
20 the various interfaces, the various programs, cut the data up in
21 a bunch of different ways, and each one has to be queried
22 independently in order to ensure that you have all the data on
23 Mr. Flynn. Is that -- am I getting that right?

24 THE WITNESS: I would agree, and also state that each
25 of these systems does have information specific to each of them

1 individually. So --

2 THE COURT: Okay.

3 THE WITNESS: -- pulling from one doesn't give you
4 everything from the other.

5 THE COURT: All right. When you say that the systems
6 are integrated, in what sense are they integrated? Do they share
7 some data, but not all data?

8 THE WITNESS: Absolutely, that's exactly correct.

9 THE COURT: Okay. All right. Proceed, counsel.

10 BY MR. SHENKAN:

11 Q Are there manuals for AutoIMS?

12 A Not that I have put hands on, no.

13 Q Have you ever asked?

14 A I have not.

15 Q Have you ever asked if there were manuals for any of these
16 systems?

17 A I have not. I saw them in operation.

18 MR. SHENKAN: Your Honor, I would ask, subject to
19 confidentiality agreement, certainly, that if there are any
20 manuals, how to documents with respect to any of the software
21 applications that the bank uses that they be provided. I would
22 ask for that.

23 BY MR. SHENKAN:

24 Q And do you remember an eDiscovery conference? Do you
25 remember that?

1 A I don't recall.

2 THE COURT: Counsel?

3 MR. PARKER: It hadn't been asked in any formal
4 document requests, so.

5 THE COURT: Well, we're going to cut that short, and
6 I'm going to direct that operational manuals for the software
7 that's involved, whether it's AutoIMS or the other software
8 programs, be provided, if they exist. I don't know in what
9 format they might exist. If it's proprietary software -- well,
10 my experience has been that proprietary software is a much bigger
11 ask than off the shelf on that score, but counsel will do their
12 best, and along with their consultant, to try and respond to that
13 request in a reasonable period of time.

14 And at this juncture, since we're trying to get
15 discovery done, as opposed to continue with the battles, sooner
16 rather than later, how long -- I'm assuming counsel's going to
17 need to get back to me on how long that's going to take.

18 MR. PARKER: I think I would, Your Honor.

19 THE COURT: Okay. On the seven day period, can you get
20 back to me in your filing with an estimate of who's going to have
21 to be consulted and what kind of effort it's going to take to put
22 together a basic operation manual for the various softwares
23 involved?

24 MR. PARKER: Yes, Your Honor.

25 THE COURT: Thank you.

1 MR. SHENKAN: May I approach, Your Honor? I would like
2 to mark this as Plaintiffs' Exhibit -- deposit Exhibit 3, please?

3 THE COURT: Yes. And this is marked Exhibit 5. Do you
4 want it to be marked --

5 MR. SHENKAN: I'm sorry. I'm sorry, Exhibit 5.

6 THE COURT: And there's another page is marked page --

7 MR. SHENKAN: Oh, no, it's Exhibit 3. I'm sorry. I
8 just made copies.

9 THE COURT: Of various --

10 MR. SHENKAN: Excuse me, Your Honor. These were -- I
11 think that we're on -- where are we on numbers?

12 THE COURT: We would be on this hearing's Exhibit
13 Number 3.

14 MR. SHENKAN: Correct.

15 THE COURT: You want this entire set of documents that
16 have just been handed to me marked Exhibit 3?

17 MR. SHENKAN: Yes, please.

18 THE COURT: Very well.

19 (Plaintiffs' Exhibit 3 marked for identification)

20 BY MR. SHENKAN:

21 Q Do you know what these are, Mr. Kaminski?

22 A They appear to be templates of notices of repossession.
23 Yeah, notices of repossession and letters.

24 Q Have you ever seen them before?

25 A I have.

1 Q Okay. And are these form documents? Are these forms?

2 A They appear to be, yes.

3 Q How about the last page, bate stamp number 20189? Is that
4 also a form document?

5 A 20189.

6 THE COURT: It's also marked Exhibit 11 on the exhibit
7 sticker that's copied on that document, the last page of this.

8 THE WITNESS: It appears to be, yes.

9 BY MR. SHENKAN:

10 Q The right-hand side, on the last page of Exhibit 3, which is
11 20189.

12 A Uh-huh.

13 Q It has, I want to say merge fields. Do you see that?

14 A I do.

15 Q I have never been provided with a copy, despite my request,
16 of merge fields for the notices of repossession. Do you know if
17 that document exists?

18 A I'm sorry, I'm not certain I understand the question.

19 Q What is this merge field? What is it -- what is it for,
20 Exhibit 20189?

21 A I would be making an educated guess. It appears that this
22 is possibly out of a Microsoft Word or Wordesk (phonetic) format,
23 and that these fields correspond to data that would be inputted
24 and then merged into these fields.

25 Q So there are merged fields also for the notice of

1 repossession of sales, the NORs, which is the first of the pages
2 in Exhibit 1?

3 THE COURT: Are we referring to the first page, which
4 is the last five digits, 19976 from the bate stamp?

5 THE WITNESS: Yeah, it -- I couldn't say for certain as
6 the redaction covers that area.

7 BY MR. SHENKAN:

8 Q To the best of your knowledge, these are forms, and they
9 still mail -- they're mail-merged, right?

10 A I would -- to the best of my knowledge, and I would assume
11 so, yes.

12 MR. SHENKAN: So, Your Honor, I would also ask that --
13 I've asked for in discovery, for the templates, as well as the
14 exemplars of both notices of repossession and the Post-Sale
15 Notices that have been used at all -- at any time during the
16 putative class period.

17 THE COURT: And I think that's been the subject of the
18 written motions; is that -- am I correct?

19 MR. SHENKAN: Yes, Your Honor.

20 THE COURT: I think I've addressed it in my expect --
21 or my tentative motion or my tentative opinion, but, counsel, any
22 response to that?

23 MR. PARKER: Your Honor, that's an easy one. So, the
24 -- in the request for production exemplars were requested. So,
25 examples of all three repossession notices and Post-Sale Notices

1 for the class period were provided. Some of those might be what
2 Plaintiffs' counsel is now -- are now calling templates. To the
3 extent that he wants both templates and exemplars, I have no
4 issue with providing those.

5 THE COURT: Very well. Okay. So, they will be
6 provided, if they have not already been. Very well, subject to
7 my tentative order, I think we've covered that. Go ahead,
8 counsel.

9 BY MR. SHENKAN:

10 Q I would like to talk to you about the storage of documents,
11 retention of documents. Do you have any knowledge as to them?

12 A As it pertains to emails, I do have some understanding. As
13 it pertains to document retention policies on their other
14 repository sites, that, I have no --

15 Q So if I were to ask you -- show you a policy that says it
16 was created on one date, and then revised on a later date, and
17 the initial policy was not provided, would you have any
18 information with respect to the whereabouts of other policies
19 that have been requested in discovery that have not been
20 provided?

21 A I would not.

22 Q Do you have any knowledge of what -- whether or not
23 Plaintiffs have been provided with all of the documents that have
24 been requested in this discovery request, if you know?

25 A That, I do not.

1 THE COURT: Which discovery request?

2 MR. SHENKAN: It would be Plaintiff's first
3 post-sale -- post-removal set of discovery.

4 THE COURT: And, Mr. Kaminski, if you know the answer,
5 you can provide it. If you don't know, you can say that.

6 THE WITNESS: I don't know.

7 BY MR. SHENKAN:

8 Q There were various objections that were interposed to the
9 first set of post-removal discovery, class discovery. Some of
10 those objections included a burden, it was too expensive, too
11 difficult, time consuming, what have you. Are you up to speed or
12 do you have any knowledge to support or refute the bank's
13 objection as to --

14 A I do not.

15 Q Were you involved, at all, in the production of the
16 documents that were provided, other than this 19,000 email/Excel
17 delivery -- deliverable discovery?

18 A In -- I'm sorry, involved in -- can you repeat the initial
19 part of your question?

20 Q I think I may have asked -- let me try to clarify that.

21 A Yeah.

22 Q You were involved with only -- the production of documents
23 was limited only to the 19,000-page production pertaining to the
24 emails and Excel spreadsheets that you converted from Excel to
25 TIFF?

1 A As it pertains to the preparation of that production, that
2 is the only one that I was involved in.

3 Q Did you ever search -- were you ever involved in any
4 searching for policies and procedures that were requested by me
5 in that discovery?

6 A I was not.

7 Q Do you have any knowledge of how to request or to search the
8 M&T Bank's repositories for policies and procedures, if you know?

9 A No, I'm -- as -- no, I'm not a bank employee.

10 Q If you were to -- wanted to contact a bank employee to do a
11 search for policies, procedure manuals, who is it, based upon
12 your experience and your interaction with the bank so far, who
13 would you contact?

14 A If I was going to contact as part of my role and ask for
15 documents from the bank, I would go through either counsel here
16 or Bill Simon, the counsel for M&T.

17 Q Was there anyone that you worked with on your -- on this --
18 with these five people, were you provided with any documents to
19 assist you in your eDiscovery liaison capacity, other than the
20 court documents, court orders that you referenced?

21 A No.

22 Q If I were to -- I'm going to just show you, and I don't need
23 to mark this as an exhibit right now, but bates stamp number
24 20240. I'm going to read it to you and just ask you a few
25 questions.

1 Paragraph 8, it says, add storage fees. The beginning of
2 that paragraph, it says confirm the storage fee one of three
3 ways.

4 THE COURT: Counsel, may I have a copy of that
5 document?

6 MR. PARKER: Me, too, please.

7 BY MR. SHENKAN:

8 Q As he's getting a copy of this, let me just ask you, there's
9 what's called Agent Coverage Fees Excel Spreadsheet.

10 THE COURT: Why don't we -- why don't we wait so that I
11 can actually follow the question.

12 MR. PARKER: Thank you, Your Honor.

13 (Pause)

14 MR. SHENKAN: Your Honor, I would like to mark this as
15 Plaintiffs' Exhibit 6, Your Honor?

16 THE COURT: I think it's 4 now.

17 MR. SHENKAN: 4.

18 THE COURT: Don't worry. Thank you. It's quite all
19 right.

20 (Plaintiffs' Exhibit 4 marked for identification)

21 BY MR. SHENKAN:

22 Q Have you ever seen this document before, Mr. Kaminski?

23 A Yes, I have.

24 Q Then I refer your attention to page 4 of 7, please.

25 A Okay.

1 Q Paragraph A, it says add storage fees, do you see that?

2 A I do.

3 Q It says if the account is New York, Pennsylvania, Maryland,
4 you must add storage fees.

5 A Okay.

6 Q And then it goes down and says confirm the storage fees one
7 of three ways, and it says consult Agent Coverage Fees Excel
8 Spreadsheet. Do you see that?

9 A I do.

10 Q What is that document, Agent Coverage Fees Excel
11 Spreadsheet? Do you know?

12 A I do not.

13 MR. SHENKAN: Your Honor, I would ask that this
14 document be provided. It is our understanding that certain
15 storage of repossessed vehicles is one of the subjects that Judge
16 Beetlestone ordered all documents to be provided.

17 We have made efforts to obtain that document and have
18 been rebuffed. I would ask that Your Honor issue an instruction
19 that the documents be provided for all versions that may be in
20 existence relative for discussing during the class period --
21 putative class period.

22 THE COURT: Vis-à-vis the representative Plaintiffs?

23 MR. SHENKAN: No, no. This -- this is --

24 THE COURT: Class wide?

25 MR. SHENKAN: I can -- I can put some additional

1 information in, but this --

2 THE COURT: Well, first, let me understand that you're
3 asking that the Agent Coverage Fees Excel Spreadsheet be
4 produced. Presumably, that's a separate document that is
5 consulted by whomever is preparing this form, correct?

6 MR. SHENKAN: Yes.

7 THE COURT: Okay.

8 MR. SHENKAN: It's a document that's consulted, and it
9 has on it all of the various reposse ssers or auctions and what
10 they are charged for as storage, their redemption fees, their
11 administrative fees, their reinstatement fees, and that's one of
12 the means that a clerk can access the information to insert it --
13 that into that notice to repossess.

14 THE COURT: So, that's how the clerk manages to confirm
15 storage fees is one of the devises that he or she might use.

16 MR. SHENKAN: Yes, Your Honor.

17 THE COURT: Is that your understanding?

18 MR. SHENKAN: Yes, sir.

19 THE COURT: And so, you're looking for the -- whatever
20 the document is that's titled Agent Coverage Fees Excel
21 Spreadsheet?

22 MR. SHENKAN: Yes, sir.

23 THE COURT: And in any of its, perhaps, manifold
24 iterations during the term of the class period?

25 MR. SHENKAN: Yes, sir.

1 THE COURT: Okay. Let me hear from Defense counsel
2 about it.

3 MR. PARKER: Your Honor, the objection is simply that
4 it hasn't been asked for before, not in any formal request, and
5 certainly not all iterations of any spreadsheet over the course
6 of the class period.

7 THE COURT: All right.

8 MR. PARKER: I couldn't even say if different
9 iterations exist.

10 THE COURT: All right. I assume, counsel, that there
11 is such a document called an Agent Coverage Fees Excel
12 Spreadsheet.

13 MR. PARKER: I believe there is, yes.

14 THE COURT: And let me ask counsel for Plaintiff, was
15 this the subject of a separate document request or is it covered
16 under one of your document requests?

17 MR. SHENKAN: It is covered under one of my document
18 requests. I think it's either 12, 13, or 14, that asks for
19 all -- it's a -- you know, all documents pertaining or relating
20 to storage repossession. I mean it was a very broad
21 encompassing --

22 THE COURT: Yeah, yeah. Well, if that has not been
23 provided, and I'm going to just take a moment and refer -- we'll
24 try and deal with this now -- to 12, 13, or 14.

25 (Pause)

1 MR. HOENSCH: Your Honor, number 12 asks for all
2 AutoIMS documents that concern the representative payments.

3 THE COURT: Yes, I'm reading 12 now, and I've read 13.

4 MR. SHENKAN: Your Honor, 13, I believe, is almost a
5 word for word version of what would was in Judge Beetlestone's
6 January 11th --

7 THE COURT: Yeah, the question is whether it covers
8 this document.

9 MR. HOENSCH: We would just say that a document isn't a
10 policy or procedure just because it might be referenced in the
11 policy or procedure.

12 THE COURT: Well, the question is whether this relates
13 to, in any way, the sending of any notice of repossession and/or
14 Post-Sale Notice. If the Agent Coverage Fees Excel Spreadsheet
15 is consulted in preparation of either of those documents, then it
16 certainly does.

17 MR. HOENSCH: Well, I'm sorry, Your Honor, are you
18 looking at 13?

19 THE COURT: I'm looking at number -- document request
20 number 13.

21 MR. HOENSCH: Right. Documents which concern or
22 relate, pertain or discuss M&T's policies, practices and/or
23 procedures.

24 THE COURT: And/or the sending of any notice of
25 repossession and/or Post-Sale Notice. So, in your reading, this

1 is not covered because it's not a policy or procedure?

2 MR. HOENSCH: Correct. It was asking for policies and
3 procedures.

4 THE COURT: It certainly looks like a procedure. This
5 is a procedure that your employees are -- by this form that I'm
6 looking at in front of me, page -- bates stamp number, the last
7 three digits, 984 of Plaintiffs' Exhibit 4 --

8 MR. HOENSCH: Yes, that is the procedure, yeah.

9 THE COURT: -- this is a -- this is a procedure that
10 that employees are designated to follow, correct?

11 MR. HOENSCH: The procedure designated on 984, yes.

12 THE COURT: Well, that's one of the bank's procedures.

13 MR. HOENSCH: Correct. The Agent Coverage Spreadsheet
14 wasn't a procedure.

15 THE COURT: Yeah. Well --

16 MR. HOENSCH: It's simply a spreadsheet that they
17 consult for names of --

18 THE COURT: Well, it's all documents which concern,
19 relate, pertain or discuss. I think that's broad enough to cover
20 a document that an employee is procedurally directed to look at
21 as part of a procedure. I think that's covered, and I think it
22 needs to be produced.

23 MR. HOENSCH: Okay.

24 THE COURT: Very well.

25 MR. HOENSCH: We can certainly do that, Your Honor.

1 THE COURT: Very well. Counsel, you may proceed.

2 BY MR. SHENKAN:

3 Q If I could direct your attention --

4 MR. SHENKAN: Thank you.

5 BY MR. SHENKAN:

6 Q If I could direct your attention to the first page of the
7 repossession --

8 A Uh-huh.

9 Q -- policy, please.

10 A Sure.

11 Q Do you see where it says purpose used, rent?

12 A Yes.

13 Q It indicates State laws, regulations that are subject to
14 change must be agreed to. Do you know if there is a document
15 related to State laws in effect, if you know?

16 A I don't know.

17 Q If I could also direct your attention on page 91, bate
18 stamp. It says -- there's a big white-out in this, in the
19 picture. Do you see that? Do you know if that was -- if that
20 was part of the policy or if that was actually whited out for
21 discovery, if you know?

22 A I can't say for certain since I didn't prepare this
23 screenshot, but it does not appear that way based on my
24 understanding and knowledge of LOCUS.

25 THE COURT: That is to say this appears to be --

1 THE WITNESS: Genuine and unaltered.

2 THE COURT: -- a genuine picture of the --

3 THE WITNESS: Correct. That is --

4 THE COURT: -- screenshot rather than a post-screenshot
5 redaction.

6 THE WITNESS: -- that is accurate.

7 THE COURT: Okay.

8 THE WITNESS: And the reason I make that assumption is
9 that I understand in LOCUS, you have columns. Column-width
10 cannot be altered in a table.

11 THE COURT: Uh-huh.

12 THE WITNESS: So, there's no way to expand those out.
13 It's simply -- it looks as though -- and it looks -- it also
14 looks as though, if you look in the upper righthand corner of the
15 screenshot, you will see that this is a maximized screen, so as
16 to facilitate a full-page screenshot rather than a selected
17 screenshot.

18 MR. SHENKAN: Okay. Thank you.

19 BY MR. SHENKAN:

20 Q Let me bring your attention back to bates 984, which is page
21 4.

22 A Yes. Yes.

23 Q Paragraph 8, section B, number 2.

24 A Uh-huh.

25 Q Roman number two.

1 A Uh-huh.

2 Q It looks like -- it says redemption specialist notes. Do
3 you know what that is?

4 A I would only be able to infer from context, but, no, I don't
5 know.

6 MR. SHENKAN: Your Honor, I would also request that
7 since it was part of the policy, that any -- to the extent that
8 there are policies or procedures, or worksheets, or instructions,
9 that follow the nomenclature of redemption specialist notes, I
10 would ask that that also be provided.

11 THE COURT: And it will be directed on to the same
12 logic.

13 MR. SHENKAN: As the Agent Coverage Fees Excel
14 Spreadsheet?

15 THE COURT: Yes.

16 MR. SHENKAN: Yes, Your Honor.

17 MR. HOENSCH: And Your Honor?

18 THE COURT: Yes.

19 MR. HOENSCH: It's our understanding that these
20 redemption specialist notes that he's referring to are
21 simply -- it's a box of notes listed in the LOCUS system, sort of
22 screen logs on the bottom righthand corner of the first page. We
23 can certainly confirm that, but they may not be separate
24 documents.

25 THE COURT: Very well. Well, counsel can certainly, in

1 responding to this, to the extent that it becomes either there's
2 no documents or the documents have already been produced in some
3 fashion, you can direct attention to the Bates stamp number or
4 the document load that has already produced those documents.

5 (Pause)

6 THE COURT: And counsel, we have about nine more
7 minutes.

8 MR. SHENKAN: I thought I was waiting to -- was that
9 issue resolved Your Honor, that last --

10 THE COURT: Yes. I directed that there be production
11 of the redemption specialist notes. Obviously, if counsel, upon
12 examination, determines that they've already been produced in
13 some other production, he can direct attention to that other
14 production and affirm. As I have indicated as a general matter,
15 that that's it, they don't have any more, or they've already
16 produced them and direct the bates stamp number.

17 MR. SHENKAN: Thank you.

18 BY MR. SHENKAN:

19 Q Mr. Kaminski, Are you familiar with the quality of review
20 forms? Do you know what that is?

21 A I do not.

22 Q Mr. Kaminski, do you know M&T's Bank's policies with respect
23 to the assessment of storage fees?

24 A I do not.

25 Q On any putative class member?

1 A I do not.

2 Q Do you know, -- do you have any knowledge with respect to
3 how to access who was actually charged storage fees in the
4 putative class?

5 A I do not.

6 Q Do you have any knowledge as to whether or not, as a matter
7 of policy and practice, the storage fees are inserted into the
8 fields in the notice of repossessions that are subject to this
9 litigation, if you know?

10 A I would have to review -- you're asking if storage fees are
11 somehow itemized in the notices of repossession?

12 Q If you know.

13 A It appears as though they are from the document you
14 provided.

15 THE COURT: Which document are you referring to, sir?

16 THE WITNESS: Bates stamp 19977. It was part of, I
17 believe, Exhibit 3, page 2.

18 THE COURT: Okay.

19 THE WITNESS: Expense of storing the vehicle is listed
20 as the fifth charge down in the bottom section.

21 THE COURT: I see.

22 BY MR. SHENKAN:

23 Q Do you know if that expense of storing the vehicle actually
24 was incurred or expected to be incurred by the letter that was
25 generated?

1 A I can't speak to what charges were or were not incurred by
2 the bank.

3 Q Do you know how it would be determined whether those charges
4 -- storage charges, were incurred by the bank? What search --
5 based upon your understanding, what search would be done to find
6 out?

7 MR. PARKER: Your Honor, I would object to this line of
8 questioning.

9 THE COURT: Yes.

10 MR. PARKER: This is going well beyond --

11 THE COURT: I'm going to -- I'm going to sustain the
12 objection, and here's my suggestion as we're drawing close to the
13 time that I have to depart. It sounds as if -- and I had hoped
14 to clarify in my own mind, but it sounds as if counsel for
15 Plaintiff, and correct me if I'm wrong, is seeking a deeper
16 understanding of the document storage and accessing realities at
17 the bank.

18 And it's obvious to me that Mr. Kaminski, while quite
19 expert at his role, is not the person with -- who's going to have
20 primary knowledge of how documents are stored, kept, and so forth
21 at the bank. That someone would be somebody else, and the rest
22 of our hearing today is going to be directed at finding out who
23 that someone else might be. And for the purpose of setting up a
24 30(b) -- a preliminary 30(b)6 deposition of that person or
25 persons who is best qualified, in the general sense, to talk with

1 personal knowledge about how documents are stored at the bank,
2 where documents are, what documents are accessible through what
3 programs.

4 That being the case, counsel can, on both sides
5 perhaps, use the lunchbreak, hopefully, to think about how that's
6 going to happen. I'm not going to presume to define the terms of
7 the 30(b)6 notice, but I am going to say that it's my
8 determination that somebody other than Mr. Kaminski is obviously
9 the person who should be asked those questions.

10 Mr. Kaminski would certainly be subject to a deposition
11 at some point in time, if necessary, for specific issues that
12 related to the scope of his employment, but by and large, much of
13 the questioning today has indicated to me that Mr. Kaminski is
14 not the person who would be best suited to talk about the bank's
15 software, and what it's capable of, and what it does house, and
16 how to access documents, and so forth.

17 So, I think we can conclude here. I'll give counsel
18 the opportunity to address that issue at the time we come back,
19 and then we'll proceed with taking testimony today and try and
20 conclude today's hearing at a reasonable hour. All right?

21 MR. SHENKAN: Thank you.

22 THE COURT: Thank you, both.

23 MR. PARKER: Thank you, Your Honor.

24 MR. SHENKAN: Thank you, Your Honor.

25 THE COURT: You may step down. We're adjourned for --

1 THE WITNESS: Thank you.

2 THE COURT: -- let's see --

3 (Off the record)

4 THE COURT: Please be back by 2:15 and take a few
5 minutes to discuss the potential shortening of the afternoon, if
6 it's possible, but I'm scheduled to be here, so I'm ready to go.
7 If we need to go to 5, that's what we'll do. Okay.

8 MR. PARKER: Your Honor --

9 THE COURT: Yes.

10 MR. PARKER: -- can Mr. Kaminski be excused for the day
11 if we have no cross for him?

12 THE COURT: I have -- I have no reason why he can't be.
13 I think I'm done. Thank you, Mr. Kaminski for your service here.

14 THE WITNESS: Thank you, sir.

15 MR. SHENKAN: Thank you, Mr. Kaminski.

16 (Recess at 12:42 p.m.; reconvening at 2:35 p.m.)

17 THE CLERK: All rise.

18 THE COURT: Please be seated. Thank you. We're
19 reconvening our hearing in the matter of Flynn v. Manufacturers
20 and Trades Trust Company.

21 Let me suggest to counsel before we get started with
22 evidence, I've had a few minutes to think about how we proceed
23 this afternoon. It seems to me that in a significant measure, I
24 have resolved the disputes, the pending discovery disputes in my
25 tentative thoughts, expressed them in memorandum of yesterday.

1 I believe that the remaining witnesses are here for the
2 purpose of trying to get through the thicket of concerns that
3 Plaintiff had about a eDiscovery liaison. As far as the
4 substance of the disputes, if the evidence is going to go to the
5 particulars on either side of my dispositions as expressed in my
6 tentative memorandum, or tentative -- my memorandum of tentative
7 resolutions, let's get to that and let me understand explicitly
8 what the witness is talking about and why the witness is being
9 produced.

10 But if the purpose of some of the witnesses is to
11 continue to, as it were, debate the issue of whether Mr.
12 Kaminski's expertise suffices to explain some of the bank's
13 processes, I think we resolved that. So, I don't think I need to
14 hear further evidence from any of the qualified or potentially
15 qualified people at the bank. The bank is going to have to
16 converse with counsel to arrange a 30(b)(6) deposition, and we're
17 going to try and get to the bottom of some of the concerns about
18 process.

19 So, that leaves me asking counsel what's the plan for
20 this afternoon in light of that? Mr. Shenkan.

21 MR. SHENKAN: May it please the Court? Your Honor, I
22 have Plaintiffs' eDiscovery liaison, Scott Matthews, who came in
23 from Michigan.

24 THE COURT: Yes.

25 MR. SHENKAN: I would like -- respectfully, my

1 suggestion would be to put him on very quickly so that -- he has
2 a very unique perspective. He participated in both eDiscovery
3 conferences.

4 THE COURT: No, I'm agreeable to his testimony.

5 MR. SHENKAN: Okay.

6 THE COURT: I understand. Okay.

7 MR. SHENKAN: Mr. Wilshaw's testimony is going to
8 really find out what the -- what subject he knows, and how to
9 access and store the information, and how it can be quickly
10 retrieved. It might not be long, but I would like to at least
11 have him -- his qualifications better understood, what his
12 involvement is, and, you know, I don't want take time to --

13 THE COURT: Right.

14 MR. SHENKAN: -- depose him. That might be relatively
15 quickly.

16 Mr. Fries is also here -- Fries. You know, I think
17 that some of the information that he knows will determine, you
18 know, for example, where are the storage receipts for all these
19 storage vehicles, all the billables that were burdensome to
20 produce, why is it so burdensome. I think Wilshaw might know
21 that as well, but I, in no way, want to belabor any of these
22 topics. I would like to catch a flight earlier --

23 THE COURT: Yeah.

24 MR. SHENKAN: -- you know, today as well. So, I'm --

25 THE COURT: Okay.

1 MR. PARKER: -- trying to -- over the course of the
2 last hour or so I tried to ramp it up.

3 THE COURT: Okay.

4 MR. SHENKAN: So --

5 THE COURT: Well, I'm glad of that. I think I may -- I
6 may cut short the testimony if I think that I've heard enough and
7 so --

8 MR. SHENKAN: Absolutely.

9 THE COURT: -- but I want to give counsel the
10 opportunity to at least make a record on some of the issues in
11 the interest for shortening debates that may take place outside
12 the court on, you know, who's going to testify about what.

13 The second thing, then let me turn to Defense counsel.
14 Any witnesses the Defense counsel wishes to put on today on any
15 of the issues that are sort of pending and they're still pending?
16 I don't know if there's any record that needs to be made to
17 bolster the Defense argument and contradiction, or to help me
18 change my decisions on my tentative decisions. So, I'm glad to
19 hear from the Defense if they have witnesses as well.

20 MR. PARKER: No, Your Honor. We're not planning to put
21 any witnesses on.

22 THE COURT: Very well. Okay. Well, then let's get
23 started with Mr. Matthews, and my understanding is that Mr.
24 Matthews may have some pertinent information on some of the
25 document issues that have bedeviled the case. So, go ahead.

1 MR. FABIAN: Your Honor, before we start, I have to
2 leave probably before we're done. I have -- because I'm
3 observant, I have to be back by the time my status starts. So, I
4 will stay as long as I can, with your permission, and then try to
5 quietly exit. I just wanted you to know ahead of time.

6 THE COURT: Well, so long as Plaintiff has counsel here
7 at the table, I'm fine with that. Thank you, sir.

8 THE CLERK: Raise your right hand, please.

9 JOHN SCOTT MATTHEWS, PLAINTIFFS' WITNESS, SWORN

10 THE CLERK: Please state your first name and spell your
11 last name for the record.

12 THE WITNESS: My name is John Scott Matthews,
13 S-C-O-T-T.

14 DIRECT EXAMINATION

15 BY MR. SHENKAN:

16 Q Mr. Matthews, would you tell everyone here in the courtroom
17 a little bit about your educational background and your work
18 experience, please?

19 A I have a B.A. in Economics and Japanese studies. I have an
20 M.B.A. from Columbia University in Finance. Since 1989, I've
21 been working professionally, 15 years since '89. I was employed
22 at Chrysler Corporation and Subsidiaries Incorp, including its
23 financial subsidiary, Chrysler Financial Corp.

24 Since 2004, when I created Spectrum, I've been doing
25 nothing but computer forensics, electronic discovery, and

1 computer security related service, providing those services.

2 Q Approximately how many eDiscovery projects have you had
3 since 2004?

4 THE COURT: I'm going to say I've actually reviewed Mr.
5 Matthews CV --

6 MR. SHENKAN: Okay. We'll move on.

7 THE COURT: -- and we can move on.

8 BY MR. SHENKAN:

9 Q Mr. Matthews, you signed the (indiscernible) discovery
10 confidentiality order?

11 A Yes.

12 Q Was there anything in that order, in your opinion, that is
13 unusual with respect to the redactions that Defense counsel has
14 made to date?

15 A In my experience, when there's a confidentiality agreement,
16 the documents that are -- that would have a search hit, would be
17 produced.

18 Q Without redaction?

19 A Without redaction.

20 MR. SHENKAN: Just for the Court's attention, there is
21 nothing in here, Your Honor, with respect to redactions.

22 THE COURT: Very well.

23 MR. SHENKAN: And that's in Document 22.

24 THE COURT: Noted.

25 BY MR. SHENKAN:

1 Q I would like to refer your attention to the previous
2 exhibits that I provided to Mr. Kaminski with respect to both
3 files.

4 A Yes.

5 Q Could you tell me what those are briefly?

6 THE COURT: Is this Government's (sic) -- or rather,
7 Plaintiffs' Exhibit 1 or Plaintiffs' Exhibit 2?

8 MR. SHENKAN: Let's talk about Plaintiffs' Exhibit 1
9 first.

10 THE COURT: Yes.

11 THE WITNESS: This illustrates the 57 documents that
12 were produced in text and TIFF format, and the -- what we don't
13 see in its totality is the page count that's associated with that
14 -- the page count. Well, you actually do see the page count.
15 You see the dock I.D., M&T with a number, the final number being
16 19,549 on page 3, and the first number -- I'm sorry for reversing
17 order here. And the first number on page 1 being 1675?

18 THE COURT: Yes.

19 THE WITNESS: So, it's a straightforward effort to do
20 the file count, the TIFF file count. So, what's notable for me
21 is of that production in TIFFS, approximately 90 percent is
22 evidenced by the printouts that you brought to the court, were
23 just blacked out.

24 BY MR. SHENKAN:

25 Q These redactions?

1 A That's correct. Let me just say that in all my years of
2 doing this, when I received the zip file that had this production
3 set, until the second conference, which occurred on July 3rd, I
4 had no idea that it was an email production. When you look at
5 that first set of documents, it is just inscrutable as to what
6 was being produced. The load file had no information regarding
7 any of the metadata, whether something as simple as an Excel file
8 for email messages.

9 It's common, very common to have the subject, from, to,
10 CC, BCC, the sent date, the attachment count, the attachment
11 names, so the person on the other receiving side understands what
12 they're looking at. That is the purpose of model orders such as
13 the one that the Judge originally entered in this case, is to
14 facilitate the exchange of information so the parties can make
15 their arguments based on the data that's provided.

16 Q What do you glean from these 57 files?

17 THE COURT: With respect to Exhibit 1?

18 MR. SHENKAN: With respect to Exhibit 1.

19 THE WITNESS: One of the takeaways that I believe is
20 relevant here is the -- one of the themes that we're hearing is
21 the burdensome nature of the discovery for this project. So,
22 what has been produced is these 57 documents because there's 57
23 text files. Some number of these are Excel files. How long
24 would it take to review those Excel files? Are there ten Excel
25 files, are there eight? If we had that information, we would be

1 able to share an understanding of that.

2 So, it's not just an academic exercise that I would
3 love to know if this was an Excel file, a Word document, or
4 whatever it was. It cuts to everything of any case, is what am I
5 looking at.

6 Q Talk to me about the standard that you have seen over the
7 last -- you've been doing this since 2004, right?

8 A Yes.

9 Q Okay. Since then, what have you seen with respect to having
10 Excel documents cut up into TIFF files like this particular
11 instance?

12 A Perhaps early on, when there's some mistakes or people just
13 aren't clear on the importance of producing something in an Excel
14 file format, or natively, which is why the model order
15 specifically calls out Excel files and Access database files by
16 way of example, looking at those -- and the Judge made a spot on
17 point -- how can you make heads or tails of these pages of black
18 documentation that was natively an Excel file? Delete those
19 rows, state to the parties why that was deleted, which is what I
20 saw, one of the purposes of the discovery liaisons.

21 You say opposing discovery liaison, we have this Excel
22 file, there's thousands of rows that need to be deleted. We can
23 provide you the deleted version of that, where all those rows are
24 gone and say, hey, there used to be 5,000 rows, now they're down
25 to ten because those are the only responsive ones. That, I

1 believe, is some of the collaborative activities that the Judge
2 envisioned when she provided that model order.

3 And in my experience in Federal Court, and working on
4 the Litigation Technology Committee as a Co-Chair in the Eastern
5 District in Michigan, that's one of the things that the judges
6 really find critically important in terms of moving forward so
7 you don't engage in what, again, the adverb would be whatever,
8 but in the continuum of production, this production is on the
9 extreme side of --

10 THE COURT: Unhelpful?

11 THE WITNESS: -- unhelpful, yes. That's a good word.

12 BY MR. SHENKAN:

13 Q Let me ask you, just from perspective, you said that you
14 have been involved in since 2004, hundreds and hundreds of
15 eDiscovery issues?

16 A Yes.

17 Q Can you give us, in that continuum, what context would this
18 be as far as if -- would you say that this -- in your opinion and
19 your observations, is this discovery abuse, in your opinion?

20 A Given the fact that it's 2018, and all the Zubulake rulings
21 came out in the mid-2000's with all the issues with eDiscovery
22 abuses, this is -- I'll continue with the Judge's wording, very
23 unhelpful.

24 Q And based upon all -- would this be one of the most extreme
25 discovery abuse instances that you've seen?

1 A Given its current date, that it was done in 2018,
2 absolutely.

3 Q In your opinion, what would have been the most efficient
4 manner to do this? I know you've said about -- if you want to
5 just redact certain columns or rows, but let me ask you, talk to
6 me about the burden involved in the production set of 57 files,
7 knowing that we have four clients. Can you give the Judge a
8 little bit of perspective as to what you believe, if there was
9 any burden, what it was and how much time would be involved to
10 provide this in the proper manner?

11 A Again, to echo one of the points that the Judge referenced
12 with Mr. Kaminski during Mr. Kaminski's testimony, there's two
13 types of burdens. There's the ones that yes, it's going to take
14 29 hours, and, of course, that's an opportunity cost to the
15 organization where they could be doing other things, as opposed
16 to answering litigation related questions, but there's an
17 efficient way to do that, and then there are inefficient ways to
18 do that, and there are ways to claim that things are inefficient
19 to do that.

20 If you're not speaking to the correct parties in the
21 organization, which is the 30(b)(6) steps that the Judge has
22 ordered, you don't know that the John Smith who works down in,
23 you know, Department X, can pull this stuff out of Access, can
24 generate the Excel files, and can get you the information you
25 need in an hour. There are people in these organizations that

1 know how to get to the information that is needed to generate
2 anything.

3 This is a bank, this is not -- this is a modern bank.
4 They have systems that cull this information. If there's one
5 thing a bank has, from, you know, auditing purposes, reporting
6 purposes at the state and federal level, it's the ability to
7 access information and generate reports to give auditors and the
8 other regulators the information they need.

9 This is a variation on a theme. They have the -- I
10 can't imagine that they would not have the expertise to query the
11 systems, generate those special queries, type out -- select this
12 information from this table, from this database, and give me the
13 dump of what that -- are in those systems.

14 Q Well, Attorney Parker has indicated that the production is
15 extended to four -- approximately 4,000 people would be four-
16 million pages. In your opinion, do you think that that's
17 accurate?

18 A Let me put it this way, there are two general buckets of
19 information that I think are at play. The second productions
20 that the Defendants made, the 19,000 documents was an email
21 production. I think that would be of generally lesser importance
22 in terms of what Plaintiffs' counsel had requested. The real
23 data that's going to drive to determine the merits of this case
24 are going to come out of these systems, LOCUS and Shaw. Shaw is
25 their accounting system. I'm incredulous that LOCUS and Shaw

1 don't communicate sufficiently to generate general ledger
2 information. All the things that a bank needs to do to generate
3 its profit and loss statements, it's cash flow statements. Those
4 are its prime directive as an entity.

5 Q How much time -- can you -- based upon what you see in
6 Exhibit 1 and Exhibit 2, do you have any idea of a range of time
7 it would take for a competent person to provide a search --
8 conduct a search and provide the information in the fashion that
9 you're talking about?

10 A It would be -- it would be days.

11 Q And that's for approximately 4,000 people?

12 A Yes.

13 Q What we don't have is an understanding of here's the data
14 dump out of the database files in order to understand how tough
15 it is, or here are the gaps of information. We have the balance
16 out, we had the loan inception date, we had the payment history,
17 you know, they were good up through a certain day. Here's the
18 total amount that was paid down in principal, here's the total
19 amount that was paid down in interest. We would have all that
20 information and go, well, gee whiz, that's great and that gets us
21 80 percent of the way, but here's the other 20 percent that we
22 don't know about, and that's why, you know, poor Mr. Kaminski, he
23 doesn't have that subject matter expertise. It would take
24 somebody who is in the weeds in this detail in the bank.

25 Q Do have you any -- based upon your knowledge in the

1 industry, and based upon what you heard with Mr. Kaminski, do you
2 have any knowledge as to how long would it take to query these 57
3 documents for just four people, four people -- four Plaintiffs?
4 Approximately, a range?

5 A So, the beauty of litigation databases like Relativity and
6 that's one of the platforms that -- litigation review platforms
7 that his company provides, and I understand from his testimony
8 that is what they used, you load the documents, in this case
9 email messages and their attachments into Relativity, and then
10 whoever is driving the show, so to speak, using the keyboard,
11 they enter search terms.

12 In this case, it would be, I would assume, the four
13 Plaintiffs' names and variations of them, perhaps it's their VIN
14 number, perhaps it's their account number, you present that
15 information into your search string, into Relativity, and because
16 Relativity, and because Relativity has all the magic behind the
17 scenes, it immediately presents you with the results.

18 Then it's up to counsel to determine is any of this
19 privileged, is this privileged communication. It's
20 straightforward. You put in the email domain of outside counsel.
21 You would put any other privileged entities in your search string
22 and you immediately, boom, dump that out and that's used to
23 generate your privilege log. The other documents that are
24 produced, boom, those are the responsive documents. And then
25 produce them pursuant to the order.

1 Q I asked you about the time frame. Would you say four hours,
2 eight hours?

3 A The first of that would be a day, but then the review on,
4 that's going to be driven by the number of attorneys who are
5 reviewing it, that sort of thing.

6 THE COURT: The first part being loading the documents
7 to begin with into Relativity, and then generating searches? Is
8 that what you're saying is a day?

9 THE WITNESS: No more than a day, yes.

10 THE COURT: Okay.

11 THE WITNESS: And that would assume -- I'm guessing
12 this is anywhere from five to ten gig of email.

13 THE COURT: Uh-huh.

14 THE WITNESS: Thirty-five thousand messages to search
15 and process is not -- unless you're talking about design --
16 drawing files, CAD files that are email attachments that are
17 multiple meg, this is going to go very quickly.

18 THE COURT: Uh-huh.

19 BY MR. SHENKAN:

20 Q Let's talk about cost. I understand -- I understand, you
21 can correct me if I'm wrong, that cost is about \$100 a gig to do
22 this e-Discovery?

23 A I'd say 100 to 200 a gig to -- once you're done processing
24 and hosting.

25 Q And then how many gigs was this?

1 A We don't know. I would estimate somewhere between 5 and 10.

2 Q So, the cost of putting this into Relativity and having the
3 host on the platform and doing searches is approximately \$1,000?
4 It should be in your opinion?

5 A A thousand to two thousand dollars, not counting some
6 professional -- some private management fees, some of consultancy
7 fees that the vendor would provide, and certainly excluding
8 review time, whatever's needed, from opposing counsel.

9 Q Talk to me about metadata very quickly. Metadata with
10 respect to this particular 19,000 page deliverable, please.

11 A Well, certainly, there is no metadata included in here.
12 There is some metadata that can be culled. When you looked at
13 the text documents, there's some email message bodies. And so,
14 you see the header, and from that, you can -- and as Mr. Kaminski
15 was saying this morning, old school, when it was only
16 photocopies, the poor people -- the paralegals would have to go
17 in and read the document, and then type in the metadata into the
18 litigation database. It was all manual. And that's what we
19 would, essentially, be forced to do.

20 All this metadata is in Relativity. It's there. The
21 subject to all that stuff is populated when Relativity does its
22 processing. There's no reason, other than to make things
23 difficult, to not include that or raise the question. That's the
24 purpose of these liaisons and the reason for these amount of
25 orders. Hey, how would you like this produced? If there's a

1 reason why it's unreasonable, now is the time to do it rather
2 than just lobbying this dump of black TIFFs to the poor client on
3 the other side.

4 Q Okay. Talk to me a little bit about Exhibit 2. What is
5 Exhibit 2? What is that?

6 A So, Exhibit 2 simply tells you -- it gives you indices of
7 the page count per a particular file. So, that first file has
8 6,234 pages of TIFFs associated with it, because it goes from
9 page 1 to one less than what you see on the next line. So, I
10 would not be surprised if those 6,000 -- at least a large, large
11 percentage of those 6,200 plus files are included in that deck of
12 black printout because, as I recall, there's just a header.
13 There's a column header that is on page 1, which had account
14 number and last name, first name, and then it's just black.

15 Q Now, I mentioned the word jigsaw puzzle before, and you
16 heard that in my conversation. Can you tell the judge what you
17 mean by jigsaw puzzles with respect to this 19,000 page --

18 A Well, I believe anybody who's worked with Excel understands
19 that unless you have a very small Excel file, one sheet, because
20 you could have multiple sheets in an Excel file and if you put
21 print on a let's say a 16 to 20 tab Excel file, you're going to
22 have a nightmare of print -- printout. And you're not going to
23 be able to tell, you know, your -- what's what by looking at
24 that.

25 The point in producing it natively is so that you can see

1 exactly, oh, here are the 20 columns, here are the rows, here are
2 the items in there. And it's just-- it's the difference between
3 having something practical and common sense, versus unhelpful.

4 Q Now, you and I talked, and I remember calling you and asking
5 you how to print one of the images, because I couldn't print what
6 I saw, which was a little bit of a row from the Excel
7 spreadsheet. And you told me to use PowerPoint. I had to cut it
8 out and then put it back. Can you tell the judge why it is that
9 I had to do all of these machinations to get even some of the
10 information from the TIFF file?

11 A When you -- OCR, for example, we'll talk about. I think
12 it's one of the first two documents where the first page is
13 column headers only that are an image. And then what the
14 Kaminski organization -- I don't recall the name of the company
15 for whom he works -- when they were tasked, they OCR'd those
16 TIFFs. My experience is you do text extraction on the documents
17 first. That forms your text file, and then you have the TIFF
18 version of it that you can quickly -- the text version is to
19 facilitate searching. That's what Relativity indexes. When we
20 talk index, that's the keys to the kingdom for searching. And
21 that's why those text files are so important.

22 To pull the -- to extract the text in an Excel file makes it
23 all searchable. When all you have are the -- when you OCR, which
24 is Optical Character Recognition, that's converting an image to
25 text, you compromise -- you run the risk of compromising the

1 integrity of the text that was originally in that document rather
2 than when you just extract it originally, it's all there. You
3 know it's good to go.

4 THE COURT: So, in short, when you OCR the TIFF file,
5 you get a lot of garble oftentimes.

6 THE WITNESS: You can unless it's a really clean image.

7 THE COURT: You can unless it's a particularly good --

8 THE WITNESS: That's correct, Your Honor. Which is why
9 the standard is you do text extraction --

10 THE COURT: Do text first.

11 THE WITNESS: Correct.

12 BY MR. SHENKAN:

13 Q I made a suggestion to the judge, and he's going to have us
14 brief this TeamViewer concept. Can you speak about your opinions
15 with respect to the efficiency of that, please?

16 A I think at this stage in the case, I think it's important
17 for both the e-Discovery liaisons to have confidence into what is
18 actually being presented as being, oh, here's how we're going to
19 generate the discovery for you. We've gotten this, which is all
20 email, which came out during the second discovery conference.

21 The TeamViewer concept will facilitate both the e-Discovery
22 liaisons to understand the fields in play, how all this data's
23 being mapped into LOCUS and Shaw, how Shaw maybe speaks back to
24 -- to LOCUS, and it's just going to give clarity to all the
25 parties and to the data that's going to be produced. And it

1 should expedite and facilitate the whole process.

2 Q I'm going to show you very quickly -- have you had a chance
3 to look at the privilege log, the most recent privilege log?

4 A I did.

5 Q Okay. Can you tell me what your impressions have been with
6 respect to that privilege log?

7 A I think it's very plain to observe. The -- in the cases
8 that I support, one of the byproducts, as I described earlier, is
9 that those privileged communications get put off to the side and
10 then my counsel will go ahead and review them and -- and provide
11 some brief explanation as to why they are privileged.

12 In this case, there was one explanation that was copied
13 through thousands, and thousands, and thousands of rows of
14 privileged documents. I -- I personally have not seen that
15 methodology employed.

16 Q So, you've worked on hundreds and hundreds of cases in e-
17 Discovery, and you've never seen this kind of a privilege log
18 provided?

19 A Not one where you just have the same -- I -- I don't
20 understand that, but that's --

21 Q And you're saying that it lacks sufficient description
22 compared to what you've been accustomed to seeing in the
23 industry?

24 A Yes.

25 MR. PARKER: Your Honor, I'm going to object to this.

1 This is going to the substance of the legal requirements of a
2 privilege log. This is beyond the scope of this particular
3 individual.

4 THE COURT: I'll overrule. Counsel for Plaintiff,
5 though, I would like a copy of the privilege log that you're
6 referring to marked as an exhibit here today. Thank you. We'll
7 mark that as Plaintiff's Exhibit No. 5.

8 (Plaintiffs' Exhibit 5 marked for identification)

9 BY MR. SHENKAN:

10 Q Also, with respect -- very quickly, with respect to
11 privilege, have you seen for the e-Discovery that you've done
12 since 2004, in the hundreds of cases, where if it's an Excel
13 spreadsheet that may have privileged information, the headers are
14 not even produced. What's your impression on that?

15 A I don't understand why an Excel file would be -- itself it
16 would be part of a privileged communication, but I believe that --
17 -- I just don't understand that methodology.

18 Q Is there any reason from what you've seen in this case why
19 the headers of any Excel spreadsheet would be protected by
20 privilege from what you've seen here?

21 A I -- I wouldn't understand that.

22 Q You need to tell --

23 A The answer would be no.

24 Q Is there anything else, in the interest of time, that you
25 have observed in this particular -- oh, I'm sorry. Excuse me one

1 minute.

2 MR. SHENKAN: May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. SHENKAN: I'm trying to hustle.

5 BY MR. SHENKAN:

6 Q Could you take a moment and look at this next exhibit, which
7 is 7, right?

8 THE COURT: Yes, Plaintiffs' Exhibit No. 6.

9 THE WITNESS: Yes. It's labeled as Repo tab.

10 BY MR. SHENKAN:

11 Q It is.

12 A And it -- I believe it says LOCUS in the header as well in
13 the top left corner.

14 Q Yeah.

15 A And --

16 Q Go ahead.

17 A And it appears to be -- it almost looks like an Excel icon
18 in the top left, but that may be the -- the LOCUS icon.

19 Q What are these fields for?

20 A So --

21 Q What happens when someone inputs these fields in templates
22 such as this?

23 A So, why all the policies and procedures are so critical in
24 this case, they provide us insight into the -- the sources of
25 data and the types of data that can be extracted. In some cases,

1 these forms, which are the front end of a database most commonly,
2 whether it's up in Cloud, in a web --

3 THE COURT: And when --

4 THE WITNESS: -- website --

5 THE COURT: And when you say the front end of a
6 database, that's a term of art, what do you mean by that?

7 THE WITNESS: Front end --

8 THE COURT: Yeah.

9 THE WITNESS: -- the GUI, the graphic user interface.

10 So, when you by way of --

11 THE COURT: Translate that into easier terms for a
12 layperson to understand. The graphic person [sic] interface,
13 that's what the user's looking at, at the keyboard when he's
14 using the software?

15 THE WITNESS: Correct. So, in this particular example,
16 this form is -- has labels. Like if you look in the expenses
17 section --

18 THE COURT: You're referring to the exhibit that was
19 marked No. 6?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Yes. Go ahead.

22 THE WITNESS: So, in that expenses section, you see
23 type with an asterisk, and then the agent, and auction, inventory
24 date. All that information would be in a database --

25 THE COURT: Uh-huh.

1 THE WITNESS: -- by way of example. And if you just
2 had that database, it would be -- you might not see column
3 headers. You would not see any rows. You would just see a bunch
4 of cells with data and there would be no way for the poor user
5 who's trying to enter the data or view the data --

6 THE COURT: Uh-huh.

7 THE WITNESS: -- to understand what's going on. The --
8 the purpose of a form like this, the front end or the graphic
9 user interface, is to facilitate a user's either review of that
10 data or the input of that data.

11 THE COURT: All right.

12 THE WITNESS: So, in this case, it could be both.
13 There could be some pretty populated information that's already
14 in the database and then as one of these particular cases comes
15 up, they have to enter different auction information and
16 expenses. If it's not pre-populated or if it's coming from a
17 separate system that's not integrated, they would have another
18 window open, perhaps.

19 THE COURT: Uh-huh.

20 THE WITNESS: And then they'd go, oh, look, there's
21 that information. Now, I got to type that into here, which is
22 why there's those myriad of processes and procedures, which are
23 very helpful, I -- I -- I can only imagine, to running the
24 business. But the point is it gives you insight into the types
25 of data and the field names that are in play and available for

1 querying to generate information that's relevant in reporting --
2 reporting is what we're talking about -- that's relevant and
3 germane to this matter.

4 BY MR. SHENKAN:

5 Q So, you work for Chrysler?

6 A Yes.

7 Q Okay. So, let's just talk about what you observed from your
8 career and experience in e-Discovery as well as these kinds of
9 templates. Does -- after the front end once, it's inputted by
10 the user, does it go to a system that is easily -- not easily,
11 but can you access it through a database of some sort?

12 A Yes. And there's -- you write queries, which is just a way
13 to interrogate the database to give you the information that
14 you're seeking.

15 Q So, if I were to ask you -- and I know you don't know it
16 -- if I were to ask how long would it take to query, based upon
17 your knowledge, to query how many people have deficiencies who've
18 had cars repossessed, would that be, in your opinion, in your
19 estimation, a difficult query for a bank of this nature?

20 A If you ask the correct person, I do not think so. There are
21 going to be what I call the subject matter experts. They might
22 be a database administrator, they might have database
23 administrator experience. They know how to generate SQL queries,
24 which is the term of art for running those interrogatories, those
25 questions against the database, and dump out the report.

1 The challenge or the -- the thing that needs to be
2 understood is who is that person, who is that John or Jane Smith,
3 however many there are, who operate these systems, who maintain
4 these systems and have the ability to do that in a -- in a swift
5 and competent manner.

6 Q Let me talk very quickly --

7 THE COURT: When you say SQL queries, tell me what
8 you're describing.

9 THE WITNESS: SQL is another term of art.

10 THE COURT: Uh-huh.

11 THE WITNESS: It's S-Q-L which is --

12 THE COURT: Yes.

13 THE WITNESS: -- structured query language.

14 THE COURT: Uh-huh.

15 THE WITNESS: It's a separate lexicon to extract
16 information from a database. So, by way of example, you have a
17 database with two tables. You would structure the -- the query
18 language would talk to the two tables. It would look for links
19 between the two tables. And then you would generate -- you would
20 tell the -- via the SQL query the data that you want to extract.
21 I want this field, I want this field, and this field pulled out
22 of the database -- out of these tables on the database.

23 THE COURT: And different databases have different
24 grammars, or devices, or means of expressing queries. They have
25 different languages, so to speak; is that correct, or do they all

1 share commonalities at this point in the evolution of database
2 technology?

3 THE WITNESS: The latter, Your Honor. Most have
4 migrated and -- and consolidated themselves to one or two SQL --
5 they're small grammatical issue or --

6 THE COURT: Yeah.

7 THE WITNESS: -- differentials between some.

8 THE COURT: Okay. Go ahead, counsel.

9 BY MR. SHENKAN:

10 Q Very quickly, can you tell me about -- there are a variety
11 of policies where the bank says that they no longer have these
12 documents. Previous iterations of policies have been lost,
13 discarded, or are no longer available. What has been your
14 understanding of these sorts of institutions with respect to
15 backups?

16 A Certainly, there's going to be regulatory requirements for
17 maintaining Legacy information. I believe it's at least seven
18 years for some of the types of information. Other parts of it
19 are -- would be defined in the -- in the data in basically your
20 backup -- your document retention and destruction policy. What
21 is your document detection -- retention and deletion policy? And
22 then from that, you can understand, well, they didn't have an
23 obligation to and that's part of their standard policy and
24 procedure. So, as long as not subject to a regulatory
25 requirement, it would be driven by their retention and

1 destruction policy for that type of data.

2 MR. SHENKAN: Your Honor, no acknowledgement -- I have
3 not formally requested the destruction and retention policies in
4 my request for production of documents. As a matter of
5 efficiency, and in light of Mr. Scott's testimony and Mr.
6 Kaminski's testimony, I would ask that the Court at least
7 consider compelling them to produce all retention policies and
8 destruction policies, which had any application or was
9 implemented at all during the last period.

10 THE COURT: I'm going to permit counsel to construct --
11 I think what we need to do first is sort through the flotsam and
12 jetsam that we have currently pending. And to the extent that
13 there are new requests that they need to be formulated, do so in
14 writing rather than trying to do it on the fly here in the
15 hearing at this point. You can certainly refer back to the
16 hearing transcript as additional explanation for the basis for
17 the request. If you feel it necessary to do so.

18 MR. SHENKAN: Thank you, Your Honor.

19 BY MR. SHENKAN:

20 Q Mr. Scott, as a matter of efficiency, is there anything else
21 that you and I had discussed that you wanted to inform the judge?

22 A No, counsel.

23 MR. SHENKAN: Thank you. Thank you, Mr. Scott.

24 THE COURT: Very well. Cross-examination?

25 MR. PARKER: No. Thank you, Your Honor.

1 THE COURT: Very well. You may step down, sir. Thank
2 you. You're excused.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Call your next witness.

5 MR. SHENKAN: Mr. Wilshaw.

6 THE COURT: Very well, Mr. Wilshaw

7 THE CLERK: Please raise your right hand.

8 ALEX WILSHAW, WITNESS, SWORN

9 THE CLERK: Please state your full name and spell your
10 last name for the record.

11 THE WITNESS: My first name is Alex, last name Wilshaw,
12 W-I-L-S-H-A-W.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. SHENKAN:

16 Q Mr. Wilshaw, good afternoon. What is it that you do for the
17 bank?

18 A I am a digital forensics investigator for M&T.

19 Q What does that mean?

20 A Essentially, my job is to institute legal holds at the
21 request of the Legal Department generally over -- I'm sorry,
22 counsel, are you able to hear me?

23 Q Yeah, I didn't hear what you said.

24 A Okay. Let me -- let me start over, if I may. Essentially,
25 my job is to institute legal holds for our Legal Department.

1 Generally, those are email-based holds. On occasion, they will
2 also request us to gather and preserve other types of evidence as
3 well that may be electronic. Also, as part of my job, I perform
4 digital forensic examinations. Generally, it doesn't happen for
5 legal, but I do perform that and other contacts for the
6 organization.

7 Q Who is it that you report to?

8 A My manager's name is Naomi Foote.

9 Q And what does she do in the organization?

10 A Her title is digital forensics manager and physical security
11 operations manager. She essentially has a hybrid role to where
12 she manages the team of which I'm a part of and she also manages
13 a physical security operations group that she recently took on.

14 Q And how many people are in the digital forensics team?

15 A One manager, that is Ms. Foote, and it is myself and one
16 other colleague who are on the team.

17 Q And what's his name?

18 A Whose name?

19 Q The other colleague.

20 A Tyler Verrall.

21 Q A-R-R-E-L?

22 A V-E-R-R-A-L-L.

23 Q How long have you had that position?

24 A I've been doing this for over about two years. The title
25 has changed in that time. I began with M&T in September of 2016,

1 where this type of function was part of my -- my duties. In July
2 of 2017 or so, the title and function changed into a different
3 division. That's when it became digital forensics investigator.

4 Q And what is it that you did with respect to anything in this
5 case?

6 A With respect to email searches, I would have supported my
7 colleagues that were performing the searches, provide any
8 guidance, helping them look over queries. With this case as
9 well, I did work with Mr. Kaminski to instruct him on, you know,
10 the nuances of the email system and the email archive.

11 Q What did you tell him to do?

12 A I beg your pardon.

13 Q What did you tell Mr. Kaminski to do?

14 A I didn't give Mr. Kaminski any orders. My role with Mr.
15 Kaminski was informing him on how the process worked. And with
16 that, essentially how we collected the mail up until the point we
17 delivered the mail to Amazon -- or Avalon, excuse me.

18 Q And who helped -- who performed the queries -- the other
19 queries?

20 THE COURT: What queries, sir?

21 BY MR. SHENKAN:

22 Q You communicated that you created queries or emails. Did I
23 mishear that?

24 THE COURT: In connection with the discovery in this
25 case? Is that your testimony, sir, that you created queries with

1 respect to the discovery produced in this case?

2 THE WITNESS: I helped construct the queries with
3 respect to the email queries. So, with the email system, I would
4 have assisted my colleagues in that.

5 BY MR. SHENKAN:

6 Q When you say your colleagues, you're talking about who?
7 You're talking about Tyler and Naomi?

8 A Yes.

9 Q Now, those queries, do you have a record of them, what they
10 are?

11 A They would be in the -- in the email archive platform, yes.
12 And they also would be captured in the request sent to us by
13 Legal.

14 Q What's that query called? How would you reference that
15 query if I were to ask you to go back to the bank and get that?

16 A The software doesn't have a real special name for the query,
17 which I -- I think is your question. Forgive me if I'm
18 misunderstanding. Essentially, it's just a query that we tell
19 the system who we're trying to run the search against, what's the
20 time frame, and any other parameters that would have been handed
21 down to us from Legal.

22 Q Okay. Do you know what the parameters were? Can you tell
23 us what the query is that you ran with respect to this case?

24 A I don't recall offhand, sir.

25 Q Do you have a time frame that you ran the queries?

1 A I don't recall offhand, sir.

2 Q Do you know how many queries you ran?

3 A There were multiple, but I can't remember how many
4 specifically.

5 Q Were there -- was there one for each of the four -- of the
6 Plaintiffs?

7 A I can't recall. I'm sorry.

8 Q If I were to ask you to provide all of the information that
9 pertained to the queries or the work that you did on this
10 project, would you be able to reconstruct that and provide
11 documents relating to that?

12 A We may be able to provide queries with respect to how much
13 work any one of us at any given time. I don't think I would be
14 able to produce that.

15 MR. SHENKAN: Your Honor, I'd also like to ask for a
16 copy of whatever queries they used. Would you like me to put
17 that in writing?

18 THE COURT: Yes, please. Yeah.

19 BY MR. SHENKAN:

20 Q And you said that you're not able to determine how much time
21 you spent on the project relating to this case?

22 A I could not, no.

23 Q Why not?

24 A I don't have those kind of analytics to track.

25 Q So, if I were to ask you to give an estimate of how much

1 money the bank had spent on production of the 19,000 page
2 production, would you have any idea how that can be reconstructed
3 by the bank?

4 A I -- I do not.

5 Q Who would know that?

6 A Honestly, I'm not sure.

7 Q Can that be reconstructed?

8 A I wouldn't know.

9 Q Do you have time records?

10 A No.

11 Q Do you have calendars where you write down what you did on a
12 particular day?

13 A I do not.

14 Q Do you keep your information on any sort of electronic
15 platform that tracks your time?

16 A I don't have time tracking software, no.

17 Q So, as you know, one of the objections that the bank has
18 interposed in writing to these discovery requests is that it's
19 burdensome. Are you aware of that?

20 A I've heard a bit on call with counsel, but specifics of that
21 argument, I do not know.

22 Q Do you know how -- how would the bank -- are you familiar
23 with the various systems the bank uses?

24 A I've heard about some of them in connection with this case.
25 Familiarity is another story.

1 Q Why don't you tell me what you are familiar with? Are you
2 familiar with LOCUS?

3 A I am not.

4 Q Are you familiar with AutoIMS?

5 A I am not.

6 Q Are you familiar with the systems that would be used to
7 generate notices of repossession letters or Post-Sale Notice
8 letters?

9 A I'm not familiar with that.

10 Q Are you familiar with the storage of retail installment
11 contracts or letters, perhaps, in FileNet?

12 A I'm not familiar with that.

13 Q Do you know anything about FileNet?

14 A I know that the bank uses FileNet in places, but that's
15 about the extent of my knowledge.

16 Q Have you ever used it?

17 A I have not.

18 Q I understand you were the chief contact or the primary
19 contact for Mr. Kaminski, is that accurate, with respect to this
20 assignment?

21 A With respect to email and this assignment, yes.

22 Q And have you reviewed his bills that might help refresh your
23 memory of how much time you spent on the project or he spent on
24 the project?

25 A I have not. I've never seen those bills.

1 Q Do you know how many emails were provided with respect to
2 this 19,000 page deliverable?

3 A I have no idea.

4 Q Mr. Scott Matthews indicated that it would be pretty easy to
5 go through an Excel spreadsheet and if redactions were proper, to
6 simply highlight the areas of the information that you wouldn't
7 want to provide and just wipe that out or delete those cells.
8 Would you agree with Mr. Matthews with respect to his testimony
9 in that respect?

10 A Respectfully, I can't comment on it either way because I
11 don't deal in redaction with my job. And, truly, my only
12 involvement with this area has been with email. I don't believe
13 I dealt with any flat files like an Excel file or any of the
14 other documentation that you've been provided.

15 Q So, if I were to ask you how many emails you looked at with
16 respect to this query, you don't know right now?

17 A We don't perform reviews. We would essentially hand that
18 mail off to our legal partner or, in this case, it would have
19 been Avalon to work with further.

20 Q So, you don't even review it. What does that mean?

21 A Meaning I don't go through those emails one by one and
22 determine if there's some kind of privilege associated with that,
23 that's relevant to us. My role in this and my team's role would
24 have been to pull that mail together and hand it off to an
25 appropriate party for the next steps in the process.

1 THE COURT: Mr. Wilshaw, let me ask you a few questions
2 then. Your job is essentially to go to the email as it stands as
3 it's used at the bank, make queries, and pull the documents and
4 provide them to the next step in the process, correct?

5 THE WITNESS: With respect to the email workflow, we
6 gather that mail, and we will assist in the production of it.

7 THE COURT: Okay.

8 THE WITNESS: But that production is very raw. So,
9 forgive me, stop me if I'm --

10 THE COURT: Yeah.

11 THE WITNESS: -- going too far, but when I discuss the
12 word production, I truly mean that we're instructing the email
13 platform to take the mail that we were instructed to gather and
14 put that in a container.

15 THE COURT: Uh-huh.

16 THE WITNESS: And there's no edits to the content at
17 that point. If there's privileged information, whether it's
18 attorney-client privilege or --

19 THE COURT: Yeah.

20 THE WITNESS: -- what have you, that's all in that
21 file.

22 THE COURT: Okay.

23 THE WITNESS: And then we hand it off to another party
24 that does whatever they need to do with it.

25 THE COURT: Container, so to speak, a design feature of

1 the email software or is it a separate file or software that you
2 use to make the collection?

3 THE WITNESS: Our email archive software provides that
4 functionality.

5 THE COURT: Okay.

6 THE WITNESS: It puts it in a format called a PFC
7 container, which is a Microsoft format.

8 THE COURT: Uh-huh. How many days did it take you to
9 make the various queries, and fill the container, and pass it
10 along to the next step in the process?

11 THE WITNESS: Building individual queries isn't the
12 part that takes a lot of time, although we do have to break it up
13 just because if we put too much of a request and too complex of a
14 request in a simple query, the system tends to break down,
15 struggle, et cetera.

16 THE COURT: Uh-huh.

17 THE WITNESS: So, there is some kind of trial and error
18 with respect to how much can we get it into one query. But as
19 far as actually collecting the mail and producing it, I don't
20 recall how long it would have taken in this case. But, truly,
21 the more custodians internal to the organization that were
22 looking at, how broad the time frames are, how complex any
23 keywords or approximately how many operators use, things of that
24 nature, the more of those that are put in there and the broader
25 those things end up being increase the time it takes to produce

1 and collect that mail.

2 THE COURT: In this case at some point, you did produce
3 a collection of raw -- pretty raw data, emails in PST format for
4 further review by counsel or whoever was going to do the review;
5 is that correct?

6 THE WITNESS: We would have handed it on to Avalon,
7 yes.

8 THE COURT: All right. Did it take a matter of weeks
9 to complete that task that you were given, or did it take a
10 matter of days?

11 THE WITNESS: Honestly, I don't recall.

12 THE COURT: Did it take months?

13 THE WITNESS: I don't believe it took months, but,
14 again, it was so long ago that I can't recall with specificity.

15 THE COURT: All right. Counsel, you may proceed.

16 BY MR. SHENKAN:

17 Q Mr. Wilshaw, how many gigabytes were provided to Avalon and
18 Mr. Kaminski?

19 A I don't recall the file size.

20 Q Do you think it was more or less than ten?

21 A I really can't speculate on that. I really don't recall.

22 Q Do you think it was more or less than a hundred gigabytes?

23 A I really don't recall.

24 Q How about a thousand gigabytes? Was it a thousand
25 gigabytes?

1 A I really don't recall.

2 Q So, if I were to ask you if it was a million gigabytes, you
3 wouldn't know?

4 MR. PARKER: Objection. This is argumentative.

5 THE COURT: Well, it's not argumentative. It's just
6 another question, but we're going to stop at a million. We're
7 not going to go ten million. So, you can answer the question.

8 THE WITNESS: I can safely say that we have not had a
9 production or submission in the millions of range.

10 BY MR. SHENKAN:

11 Q Let's talk about what the bank's policies and procedures are
12 with respect to document retention very quickly. Are you
13 familiar with the document retention protocol for the bank?

14 A I am not.

15 Q Are you familiar with the instruction protocol?

16 A I am not.

17 Q Are you familiar with the backup solutions that the bank
18 uses for products that the bank uses to back up their database?

19 A I am not.

20 Q Then who would be?

21 A Honestly, I'm not sure. It would likely be someone within
22 our technology division, but I don't even know where to start
23 with the contact on that.

24 Q Who's in charge of your technology division who might know
25 that information?

1 A Honestly, I'm not sure. You would have to work through
2 counsel to figure who that point would be.

3 Q I'm asking you, do you know?

4 A Respectfully, counsel, I don't have the answer for you.

5 Q If I were to ask you to let me know about how expenses are
6 tracked --

7 THE COURT: What expenses, counsel?

8 BY MR. SHENKAN:

9 Q Expenses are tracked for storage expenses or expenses
10 relative to a repossessed vehicle, would you know how that's
11 done?

12 A I would not.

13 Q Do you know who would know?

14 A I do not.

15 Q Do you know who, in your opinion, would be the best or most
16 knowledgeable person to talk about the subject of the systems
17 that the bank uses?

18 A I really am not sure. Again, I come back to it would
19 probably be a technology point of contact you'd be looking for.
20 Where that start of that search would be to find that person, I
21 couldn't tell you.

22 Q Mr. Matthews talked about the presentation of Excel
23 spreadsheets in TIFF files. Do you have any familiarity with
24 that process?

25 A I do not.

1 THE COURT: All right, counsel. I think that --

2 MR. SHENKAN: Okay.

3 THE COURT: -- I'm going to direct that if there's any
4 further questioning that it be directed towards things that Mr.
5 Wilshaw does know.

6 BY MR. SHENKAN:

7 Q Did you tell me everything that you did with respect to the
8 assignment that you had regarding this particular case?

9 A I have.

10 THE COURT: Very well.

11 MR. SHENKAN: Thank you very much.

12 THE COURT: Is there any cross-examination?

13 MR. PARKER: No, Your Honor.

14 THE COURT: Okay. You may step down, sir. Thank you.
15 You're excused.

16 MR. SHENKAN: Thank you, sir.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Next witness.

19 MR. SHENKAN: The next witness is Mr. Fries.

20 MR. PARKER: Your Honor, is Mr. Wilshire free to leave?
21 I don't know if he's going to or not, but --

22 THE COURT: Yes.

23 MR. PARKER: Okay.

24 THE COURT: Mr. Wilshaw is free to leave.

25 MR. PARKER: Thank you very much.

1 THE COURT: Thank you.

2 THE CLERK: Please raise your right hand.

3 KENNETH STEVEN FRIES, WITNESS, SWORN

4 THE CLERK: Please state your full name and spell your
5 last name for the record.

6 THE WITNESS: Kenneth Steven Fries, F-R-I-E-S.

7 DIRECT EXAMINATION

8 BY MR. SHENKAN:

9 Q Mr. Fries, good afternoon.

10 A Good afternoon.

11 Q What is it that you do for the bank? What's your position?

12 A Currently, I am a process improvement manager. I'm a Vice-
13 President of the bank and Process Improvement Manager.

14 Q What does that mean, process improvement manager?

15 A So right now, I'm in -- in charge of process efficiencies,
16 removing waste at the bank, improving -- just improving processes
17 all across consumer asset management.

18 Q In this litigation, in Rule 26(a) disclosures, you're the
19 only person that's been designated to have any information with
20 respect to the subjects in this case. Are you aware of that?

21 A Yes.

22 Q Is that accurate? Is that an accurate representation, in
23 your opinion?

24 A Yes.

25 Q You indicated that the class size from the initial complaint

1 that was filed in 2017 was approximately 4,000 people?

2 A Just short of 4,000, yeah.

3 Q And what did you do to identify those people? When I say
4 what did you do, who did you call, who did you contact, how did
5 the process happen? Could you just tell me a little bit about
6 that process?

7 A Sure. I was instructed of the date range that this case
8 surrounded. And I was instructed through Legal that -- of the
9 parameters. For instance, the, you know, repossessions in the --
10 for Pennsylvania accounts. And what I really did was I just
11 contacted our analytics team, gave them those parameters, and
12 advised them I needed certain information such as account
13 numbers. I needed their, I believe, origination date, the -- the
14 state that the contract was in, although they would -- yeah,
15 they -- I advised them that they needed to be Pennsylvania. Some
16 financial information that was in our Shaw system.

17 And I really just sent the request over to analytics. They
18 developed a report and in a -- in a spreadsheet format. And that
19 was passed on to legal counsel.

20 Q Those account numbers, are there any names associated with
21 that or is it just account numbers?

22 A There are. There are names.

23 Q So, if I were to ask you to provide a copy of that
24 spreadsheet and redact the column of the people's names, how
25 difficult would that be for the bank to do?

1 A It would be relatively easy.

2 Q Who in your analytics team did you speak to?

3 A Mr. Randy Surface.

4 Q What is his position at the bank?

5 A He's the man -- he's a manager of the Analytics Department.
6 I don't recall his exact title, but I do know that he's the
7 manager.

8 Q Do you know how many deficiency balances there are for the
9 putative class? Have you done that research?

10 MR. PARKER: Your Honor, I would object. This is going
11 well beyond the scope of what's the subject of this evidentiary
12 hearing.

13 THE COURT: It is. It's sustained.

14 MR. PARKER: Thank you.

15 THE COURT: We're not doing substantive discovery.
16 We're trying to wade through document requests and interrogatory
17 requests and determine whether they're burdensome or whether
18 they're relevant and to make rulings on the objections.

19 MR. SHENKAN: The only reason why I asked, Your Honor,
20 is because the providing of the deficiencies there was a
21 burdensome objection. It was one of my requests.

22 THE COURT: Very well. I'll permit short questioning
23 about the process of obtaining deficiency balances.

24 BY MR. SHENKAN:

25 Q Have you obtained any information with respect to deficiency

1 balances for the putative class?

2 A I believe there's a column on that report that lists what
3 the remaining balance on the account is.

4 Q And does it also have a column for bankruptcy people, if you
5 were to file for bankruptcy?

6 A It does. It does.

7 Q Are there accounts in there for the finance charges to
8 figure out statutory damages?

9 A I believe it does.

10 MR. PARKER: Your Honor, I also object on the grounds
11 that this is calling for -- this is delving into claims of work
12 product. This is inappropriate.

13 THE COURT: Well, I'm going to overrule this. At this
14 point, counsel, I've got to tell you there's been resistance at
15 every step of the way, it appears, from the bank to providing
16 simple information in a lawsuit. Right now, I'm interested in
17 hearing about this because it bears on the potential for
18 sanctions as well.

19 MR. PARKER: Yes, Your Honor.

20 THE COURT: As to how easy this is to provide, and this
21 information has not -- as far as I can determine been provided.
22 It's been the subject of a hailstorm of objections. And I think
23 it's time to sit down. I'm going to allow this questioning to go
24 on. We'll sort through the privilege issues after it comes up,
25 and if there are legitimate privilege claims or work product

1 claims, we'll sort them out.

2 MR. PARKER: Yes, Your Honor.

3 THE COURT: I've got to hear them anyway and determine
4 whether it's privileged or work product. So, at this point,
5 we're going to go forward.

6 MR. PARKER: Yes, Your Honor.

7 THE COURT: And if this record needs to be sealed
8 because there's some privileged matter or some work product, then
9 we're going to deal with it.

10 MR. PARKER: Understood.

11 THE COURT: So, the questioning's going to go forward.
12 Go ahead.

13 BY MR. SHENKAN:

14 Q Just to clarify, the minimum statutory damages information
15 was also in this report; is that right?

16 A I believe so. If -- if I understand what you're asking,
17 there was a finance charge column.

18 Q And there was also the amount financed column as well?

19 A I believe so. I would have to look at the document to be
20 sure, but, yes.

21 Q How about the amount that's been paid on a deficiency -- a
22 purported deficiency balance since the car had been repossessed?
23 Is that also on there?

24 A I don't believe that's on there. No.

25 Q Would that be a simple analytic to figure out for Randy

1 Surface or any of the other folks in the analytics team?

2 A I'm not an expert at it. I -- I think it can be taken care
3 of in -- in a query. Yes, I would think so.

4 Q There are three classes -- putative classes. Are you
5 familiar with those three classes?

6 A I would need to be reminded of those classes.

7 Q Have you read the lawsuit?

8 A I have. And I understand it's important, but it's --
9 it's -- it's been a while. I'm no longer in that position, so
10 it's my -- my priorities are elsewhere at this point, but I
11 have -- I have read the material.

12 Q I'm sorry. You're no longer in what position?

13 A When this all started, I was in a -- I was a manager of
14 special services. So, I was the manager of the bankruptcy
15 department, probate department, legal liaison department. I've
16 had previous experience in collections default and managing the
17 repossession remarketing department as well.

18 Q Who is that person now that took your place?

19 A My specific just pertaining to bankruptcies, legal, and
20 probate is Jason Davis.

21 Q Who's in charge of the analytics department? Is that Randy
22 Surface? He's the manager?

23 A He's the manager, correct. There's -- he -- he has a
24 manager as well, and he has a manager as well.

25 Q Who is Randy Surface's manager?

1 A Joseph Hassett, H-A-S-S-E-T-T.

2 Q And very quickly, his manager -- Joseph Hassett's manager?

3 A Chris Lightcap, L-I-G-H-T-C-A-P.

4 Q Now, if I want to ask about, you know, how these systems
5 work and how they actually integrate all of this, you know,
6 information, who, in your opinion, would be the best person to
7 ask that of?

8 A From the user perspective, if you're looking for one person,
9 I would recommend myself. From a technical perspective, each one
10 of those systems has a technical owner department. They would be
11 the ones to contact. I don't have particular names for each one
12 of those systems as their technical owner. That would have to be
13 further researched.

14 Q Further researched. So, if I asked you who's in charge of
15 the LOCUS system, you have no idea?

16 A That's incorrect. CISPA is the department that is the
17 technical owner of the LOCUS system. They -- they developed it.

18 Q What is CISPA?

19 A It's an acronym, C-I -- C-I-S-P-A. I -- I don't know what
20 it refers to.

21 Q Is there someone who's in charge of the LOCUS system?

22 A CISPA is the department that built it and manages it.

23 Q And who's in charge of CISPA?

24 A Robert Denman, last I knew, D-E-N-M-A-N.

25 Q Any other systems that you know the manager of?

1 A So -- so, Shaw is a -- is not a homegrown system. Shaw
2 would have its own owners, but we -- our technology department is
3 the best department to give detailed description on the operation
4 of Shaw.

5 Q And you don't know who's in charge of the technology
6 department?

7 A I would say Tina Nowicki, N-O-W-I-C-K-I.

8 Q So, if I were to find out and ask how all of the information
9 for each of these systems works in the store, would I then have
10 to have each person in each of these teams that purportedly own
11 the know-how come and provide testimony in your opinion?

12 A If it's anything about a user perspective, yes, you would
13 want to talk to each one of the technical owners.

14 MR. SHENKAN: Your Honor, there's seven systems. Do I
15 ask --

16 THE COURT: You'll reduce it to a written request.

17 MR. SHENKAN: Yes, I will.

18 BY MR. SHENKAN:

19 Q Let me ask you, are you -- your involvement in this
20 particular case, have you been involved in the production of
21 documents and responses to our inquiries?

22 A Yes.

23 Q Are you familiar with the objections that have been
24 interposed to the discovery that I served?

25 A In general, yes.

1 Q Are you familiar with the burdensome objections?

2 A Yes.

3 MR. SHENKAN: Your Honor, I don't want to duplicate
4 efforts. Can I --

5 THE COURT: Go ahead and ask him what's the basis of
6 the burdensomeness and the general. You can ask him specific
7 questions.

8 BY MR. SHENKAN:

9 Q Can you tell me about the basis of the burdensome objections
10 in general?

11 A Are you asking me to kind of explain what your -- what
12 your -- your argument is?

13 THE COURT: No. The burdensome objections are voiced
14 by the bank.

15 THE WITNESS: Okay. Yeah.

16 THE COURT: So, the question is what's the burden of
17 the production. You can give us some illustrative --

18 THE WITNESS: Okay.

19 THE COURT: -- examples, perhaps.

20 THE WITNESS: Okay. So, based on the research that
21 we've conducted so far, for the Plaintiffs involved, it involved
22 a very manual process of gathering all of the information that
23 was requested of us in reference to taking screenshots of each
24 and every bit of information that is pertaining to these
25 Plaintiffs from all of these systems. And I believe based on

1 that and the time it took to do all of that, I believe that's the
2 basis for the --

3 THE COURT: Uh-huh.

4 THE WITNESS: -- for the objection.

5 BY MR. SHENKAN:

6 Q So, it's the screenshots for all of the systems --

7 A Uh-huh.

8 Q -- for all of the four Plaintiffs?

9 A Uh-huh.

10 Q That's the burdensome objection?

11 A Yeah. In addition to creating -- going into the On-Demand
12 system, printing up all the statements, going through the
13 collection history, which can be -- which can be rather
14 burdensome --

15 Q How --

16 A -- the printing of those, yeah.

17 Q How burdensome is it for you to print out a statement of
18 history for a client?

19 A Well, it -- it can be burdensome by the time you print up --
20 and I -- I don't have the exact amount of pages that some of
21 these Plaintiffs have in collection histories, but you have
22 to -- when it's archived out of the CACS system, you have to --
23 you have to put it into Word. Otherwise, you're going to find it
24 on a mainframe -- like a mainframe-type -- it's going to be
25 visually mainframe, and you're going to -- and you're never going

1 to be able to read it. There's no way to -- you can take a print
2 screen, but then there's other fields on the side. So, you have
3 to actually combine it and put it into a Word doc. So, there's
4 some combining you have to do for these systems that are not --
5 it's not generally user-friendly when you're trying to retrieve
6 that.

7 THE COURT: Who made the decision to produce the
8 information by screenshots instead of by native format by
9 electronically producing the data?

10 THE WITNESS: I -- I don't recall who made the final
11 decision. We were asked to provide the information --

12 THE COURT: Uh-huh.

13 THE WITNESS: -- for the collection history. And we
14 put it all into Word. So that's the only way we could --

15 THE COURT: Did Plaintiff demand, as part of his
16 production, that you do screenshots as opposed to producing
17 electronically or was that a decision that was made by somebody
18 in the bank or bank's counsel?

19 THE WITNESS: I don't -- I don't recall that there was
20 an actual decision made.

21 THE COURT: Somebody made a decision at some point to
22 produce the information requested by taking screenshots.

23 THE WITNESS: Uh-huh.

24 THE COURT: I'm just looking for where that decision
25 came from.

1 THE WITNESS: Well, in the -- the CACS, if it's in the
2 CACS system currently today, that's the only way you can do it.
3 And if it's in -- if it's in archive CACS, it would be a
4 screenshot as well. The only decision that was really made was
5 to put it into a readable format so that everybody could look at
6 it and not be confused and put it in Word. So, those would be
7 the CACS history notes that were --

8 THE COURT: Who owns the CACS system?

9 THE WITNESS: So CACS is, I believe, CGI. I believe
10 they're the vendor.

11 THE COURT: What is CGI? I mean so it's an outside
12 vendor?

13 THE WITNESS: Yeah. Yeah.

14 THE COURT: How long has the bank been using CACS?

15 THE WITNESS: Oh, before I got there in 2001.

16 THE COURT: And who at the bank is the primary
17 custodian of the CACS system, if you will?

18 THE WITNESS: So, we have a CACS technical team.

19 THE COURT: Uh-huh.

20 THE WITNESS: They would be probably -- if you wanted
21 to know the ins and outs of CACS, you'd want to talk to them.

22 THE COURT: Okay.

23 BY MR. SHENKAN:

24 Q Is that the only system that the bank uses other than
25 AutoIMS that is vendor-provided, it's not homegrown, if you know?

1 A So, if you're asking for another system that's not
2 homegrown, there's Columbia Ultimate.

3 Q What is that?

4 A That is the recovery collection system. So, once an account
5 goes into charge-off, it is -- any collection activity is housed
6 in that system.

7 Q How much time did it take to generate the initial report
8 that you spoke of that has the person's name, the account number,
9 the finance charge, whether they filed for bankruptcy, and the
10 rest of the information? Would it take a day?

11 A No. I believe it took about -- I'd have to consult with
12 Randy Surface, but I would guess about a week to build it and
13 then get the report back.

14 Q And have you provided me -- do you know if the bank's
15 provided me with that information in the form of an Excel
16 spreadsheet with the columns, so I can see what the column is of
17 the spreadsheet that you didn't know if it's been provided?

18 A To you?

19 Q To me.

20 A I don't know if it's been provided. It's been provided to
21 our legal counsel.

22 MR. SHENKAN: Did you want me to ask -- to also put
23 that in writing, Your Honor?

24 THE COURT: Yeah. Any additional request. I don't
25 want to have counsel for the Defense attempting to track back

1 through a transcript. It's brutal, and unnecessarily confusing.
2 So, you can reduce it to writing.

3 BY MR. SHENKAN:

4 Q What's that document called, sir?

5 THE COURT: The spreadsheet that you're talking about?

6 BY MR. SHENKAN:

7 Q Yeah. What's that spreadsheet called?

8 A I --

9 Q Is it a spreadsheet?

10 THE COURT: Well, first, does it have some name that's
11 widely used?

12 THE WITNESS: Well, it would -- it would have some name
13 saved into --

14 THE COURT: A file name?

15 THE WITNESS: -- a file, right.

16 THE COURT: Okay.

17 THE WITNESS: Yeah. I don't recall --

18 THE COURT: You don't --

19 THE WITNESS: -- the exact name. I -- I -- I don't
20 know.

21 BY MR. SHENKAN:

22 Q If I called it the slim spreadsheet that's referred in here,
23 is that adequate for you to --

24 A It's adequate for me.

25 Q What other spreadsheets have you done, has the bank done

1 with respect to determining how and in what fashion to respond to
2 discovery?

3 A I believe that's -- I believe that's it.

4 Q I'm going to ask you -- you can tell -- do you know if I
5 made some discovery requests, the responses of which have not yet
6 been provided by the bank?

7 A I don't know of any, no.

8 MR. SHENKAN: May I approach, Your Honor?

9 THE COURT: Yes. Thank you. This is Exhibit No. 7 for
10 Plaintiff.

11 (Plaintiffs' Exhibit 7 marked for identification)

12 BY MR. SHENKAN:

13 Q I'm going to refer your attention to the second page of
14 Exhibit 7, bates stamp number 446. And this is just for your
15 edification, what I've done is, is I went through the various
16 policies that had been provided, and I've identified what's been
17 provided and what I think remains outstanding. Have you seen
18 this document before, sir?

19 A Yes, I believe I've seen this document before.

20 Q Do you know if -- I know that the bank provided just two
21 days ago 66 additional pages of policies. Are you aware of that?

22 A Yes.

23 Q Why did they wait so long to provide those policies?

24 A So, with a lot of these procedures, they were housed in the
25 business units themselves. So, it's very difficult to try and

1 track these down. I know this is a discovery case, so each and
2 every day we are still working to accommodate all requests made
3 by you. And as soon as we get the information, we are providing
4 it to you.

5 THE COURT: Sir, are these policies -- and excuse me,
6 counsel, for interrupting, but --

7 THE WITNESS: Uh-huh.

8 THE COURT: -- are these policies typically had on
9 electronically -- retained electronically or are they actual
10 physical policies that somebody has to go and open and copy?

11 THE WITNESS: So, typically, prior to us having a
12 SharePoint site for these procedures --

13 THE COURT: Uh-huh.

14 THE WITNESS: -- they would be in, usually, Word
15 format --

16 THE COURT: Okay.

17 THE WITNESS: -- and saved onto a shared drive
18 somewhere --

19 THE COURT: Okay.

20 THE WITNESS: -- in the bank.

21 THE COURT: So, these policies that are reflected in
22 the first page of Exhibit 7, are they drawn from a computer bank
23 somewhere, some type of computer program and then printed out?

24 THE WITNESS: No. So, these particular ones look like
25 they would be included in -- like the bold print there, there

1 would be some sort of version in SharePoint.

2 THE COURT: And SharePoint is what?

3 THE WITNESS: It's -- it's like a Microsoft -- I don't
4 know if it's an application, but it's a Microsoft-based --
5 Microsoft Office-base product.

6 THE COURT: If you sit at your desk at your office at
7 the bank, can you access the SharePoint and these documents on
8 the SharePoint?

9 THE WITNESS: I can access the documents in SharePoint,
10 correct. If they are uploaded in --

11 THE COURT: Are these documents --

12 THE WITNESS: -- if they were uploaded to SharePoint, I
13 would be able to view them, the one caveat being if there was a
14 procedure that was deemed archived --

15 THE COURT: I see.

16 THE WITNESS: -- that would not be -- I would not be
17 able to get that. That would -- I would have to go out to grab
18 that from the manager of that SharePoint site.

19 THE COURT: Sitting here, can you tell which of these
20 12 policies listed on the first page of Exhibit 7 were, in fact,
21 on SharePoint or were archived such that you have to go retrieve
22 them by a different means?

23 THE WITNESS: Yeah. I would have to go through them
24 because they're -- they're referencing earlier versions.

25 THE COURT: I see.

1 THE WITNESS: So, I wouldn't know if those earlier
2 versions were put on SharePoint in the first place.

3 THE COURT: Okay. All right. Counsel, I think I've
4 heard enough from the witness in terms of my projections about --
5 as far as I can see, but I'm certainly willing to allow you to
6 continue if you have an important -- a different subject matter
7 to talk to the witness about, but I think we need to wrap it up
8 because I want to touch base on the privilege issue as well.

9 MR. SHENKAN: Your Honor, I'll do my best to --

10 THE COURT: All right.

11 MR. SHENKAN: -- to wrap it up. If you can give me
12 just a little bit more time to ask a couple of critical
13 questions.

14 THE COURT: Okay.

15 MR. SHENKAN: Thank you, Your Honor.

16 THE COURT: Well, as an old Virginia judge used to say
17 to us when we were trying cases in front of him, he's like, well,
18 I suggest you ask your most important questions first because the
19 time is drawing to a close. This is Exhibit No. 8

20 MR. SHENKAN: Yes.

21 (Plaintiffs' Exhibit 8 marked for identification)

22 BY MR. SHENKAN:

23 Q Do you know what that is, sir, Exhibit No. 8?

24 A Yeah. It looks like a screenshot from LOCUS.

25 Q Okay. And I'm looking at the fees, repo fees. Is this --

1 does this list all of the fees that any putative class member
2 would have -- I'm sorry. Does this list all of the fees, which
3 would have been paid by the bank relating to any putative class
4 members relating to this case? Would this tab provide that
5 information?

6 A I can't say it was paid by the bank, but it looks to
7 encompass most of the fees that I am -- I recognize.

8 Q Where else would the fees or expenses be housed? What
9 system or template would that be in besides this particular
10 template which is in Exhibit 8?

11 A So, they should all be in the LOCUS. They should all be in
12 LOCUS. So, this is fees coming out of AutoIMS. So, I -- I can't
13 think of another system that would have any additional fees.

14 Q Okay. The expenses that the bank has incurred, where are
15 they housed, in LOCUS?

16 A Correct.

17 Q And with respect to other expenses that are housed in
18 AutoIMS, can you tell me what the differential is? Why the
19 difference?

20 A So AutoIMS will -- the fees will carry over into LOCUS
21 through a feed from AutoIMS. The classification of fees is a
22 little bit different than the classification of fees in LOCUS.
23 So, yes, the total should remain the same. You might see a
24 breakdown, like -- I'm trying to think of a particular -- like
25 the \$20 other fee might be included in LOCUS as a all

1 encompassing repo fee. So, the classification might be a little
2 bit different when it populates a LOCUS field. There's another
3 field for fees, so -- but the fees -- the fees are in LOCUS.

4 Q So, I'm looking -- tell me about the storage fees.

5 A Okay.

6 Q The storage expenses. When the bank sends out a notice of
7 repossession --

8 A Uh-huh.

9 Q -- as you know, the notice say -- it says, typically, 25 to
10 \$35 dollars a day.

11 A Uh-huh.

12 Q Are you familiar with that?

13 A Uh-huh.

14 Q Has the bank incurred any of those fees at the time they
15 send out the notice?

16 A The bank has incurred no fees for storage.

17 Q Why is it that the bank then places those nomenclatures as
18 expenses on the notice of repossession if the bank had not
19 incurred any of those fees, if you know?

20 A Well, the storage fees is a customer expense.

21 THE COURT: I think we're going to stop the
22 questioning, insofar as it's dealing with what sounds like truly
23 substantive --

24 MR. SHENKAN: Okay.

25 THE COURT: -- questions that pertain to the

1 litigation. My purpose here is to try and determine about what
2 discovery should be had and what should be avoided, and that's
3 not going to help me to know why the bank did or did not include
4 storage fees or how they were calculated. That really doesn't,
5 maybe go to the heart of the substance of the case, but it
6 doesn't help me much in terms of discovery dispute.

7 So, we're going to --

8 BY MR. SHENKAN:

9 Q How about accounting records, if any, with respect to this
10 repair sale -- repair fee? Are there any records of that?

11 A You're referring to the recondition fee or the \$200 fee?

12 Q Yes.

13 A Okay.

14 Q Are there any records of those expenses?

15 A There would be.

16 THE COURT: I think what we'll do is this, Mr. Shenkan.
17 I'm going to stop the questioning. I'm certainly going to permit
18 you to notice the deposition of Mr. Fries for a later time, at
19 the convenience of bank counsel, and so forth, on some of this
20 subject matter, but we're going to stop for today with Mr. Fries.
21 Is there any cross-examination from the bank?

22 MR. PARKER: No, Your Honor.

23 THE COURT: Very well. Mr. Fries, you may be excused.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you.

1 MR. SHENKAN: Thank you.

2 THE COURT: I want to direct the parties' attention to
3 the privilege log dispute. My take on this is that I have the
4 most recent privilege log in hand; is that correct?

5 MR. HOENSCH: Yes, Your Honor.

6 THE COURT: And it will also be produced to me
7 electronically, so that I can work through it electronically, as
8 well as by hand. Okay. It's been filed, document 110-2, ECF; is
9 that correct, counsel for the Defense? The privilege log, is
10 this the most recent iteration of the privilege log?

11 MR. HOENSCH: I am not sure that we have filed a
12 privilege log with anything.

13 THE COURT: Well, this says that document 110-2 is the
14 Plaintiffs' Exhibit number 5. What I think is probably best to
15 do is this. Defense counsel will provide me with your most up-
16 to-date privilege log, so that we're all working from the same
17 page. Also, provide counsel for Plaintiff with the same thing.
18 It may have already been provided and there's no changes, but I
19 just want to make sure that I've got the most up-to-date log.
20 There's no sense in me looking at a historical document that's
21 not up-to-date.

22 So, that will be provided within seven days. I trust
23 that since the log has already been prepared that, in reality,
24 this will not be an involved process for counsel. Provide that
25 to me in copy -- hard copy form, as well as in electronic form.

1 And I have the parties' pros and cons on the privilege
2 log and the documents that underly the privilege log. Is that
3 the lovely set of boxes that I see in front of counsel there?

4 MR. HOENSCH: That is most of it, Your Honor.

5 THE COURT: Okay.

6 MR. HOENSCH: If I could talk about the privilege log
7 for just one second?

8 THE COURT: Yes.

9 MR. HOENSCH: The bottom four boxes are all of the
10 Excel spreadsheets that are listed in the privilege log.

11 THE COURT: Right.

12 MR. HOENSCH: The top box is the other documents that
13 are listed on the privilege log.

14 THE COURT: Now, speaking of --

15 MR. HOENSCH: And just --

16 THE COURT: Go ahead.

17 MR. HOENSCH: I'm sorry, just --

18 THE COURT: No, no, go ahead and make a record.

19 MR. HOENSCH: -- just to briefly explain --

20 THE COURT: Yeah, absolutely.

21 MR. HOENSCH: -- how the privilege log works. So, if
22 you look at the file extension column --

23 THE COURT: What is that?

24 MR. HOENSCH: -- if that is blank, then that means --

25 THE COURT: I'm looking at columns across that --

1 MR. HOENSCH: On --

2 THE COURT: -- and there's a third -- or, one, two,
3 three, four, fifth column across says --

4 MR. HOENSCH: Fifth column.

5 THE COURT: -- file extension that's blank; is that
6 right?

7 MR. HOENSCH: That's right. So, if it's blank that's
8 an email.

9 THE COURT: I see.

10 MR. HOENSCH: And then the documents under that blank
11 email -- so, look at the second blank down. That was an email.

12 THE COURT: Uh-huh.

13 MR. HOENSCH: And then the PDF and the two Excel
14 spreadsheets underneath of --

15 THE COURT: Uh-huh.

16 MR. HOENSCH: -- that were the attachments to that
17 email.

18 THE COURT: I see. How simple or difficult is it going
19 to be for me to wade into some boxes and relate them to this
20 document?

21 MR. HOENSCH: So, the first column contains the
22 Relativity I.D. --

23 THE COURT: Uh-huh.

24 MR. HOENSCH: -- for each of these. For all of the
25 non-spreadsheet documents --

1 THE COURT: Uh-huh.

2 MR. HOENSCH: -- that Relativity I.D. is printed across
3 the bottom of each of those documents. For the spreadsheets, the
4 Relativity I.D. has been -- there's a label on each spreadsheet,
5 either a post-it note or an actual label on the actual printed
6 spreadsheet in the box.

7 THE COURT: Okay.

8 MR. HOENSCH: This is with the exception of the first
9 eight or so -- one, two, three, four -- with the exception of the
10 first ten spreadsheets. Those spreadsheets were related to a
11 prior litigation and those were simply too big to print.

12 So, unfortunately, what we did for those, we stitched
13 together the first page of what that spreadsheet would be. I
14 think they spread from column A through column -- you know, 50
15 some columns by 51,000 rows.

16 THE COURT: Uh-huh.

17 MR. HOENSCH: To print those it would have been
18 approximately 10,000 pages --

19 THE COURT: Uh-huh.

20 MR. HOENSCH: -- each. So, to avoid printing 100,000
21 pages, we printed out the beginning section --

22 THE COURT: Uh-huh.

23 MR. HOENSCH: -- of each page, of each one, and
24 stitched them together so Your Honor could get the information --
25 you know, get a flavor of the information --

1 THE COURT: Uh-huh.

2 MR. HOENSCH: -- that was contained in those
3 spreadsheets along with on the label it says how many pages that
4 spreadsheet actually would have been had we printed it out in
5 that format.

6 THE COURT: All right. My -- what I intend to do is to
7 select no more than two items from each page -- I see there's 48
8 pages of privilege log -- randomly, as an effort to sample and to
9 give the parties a ruling on the limited sample. That sampling
10 may reveal that the work is still too overwhelming for a sole
11 practitioner, which is me, with two law clerks who are busy full-
12 time writing opinions. And so, we'll see how that goes.

13 I encourage the parties to continue discussions about
14 the privilege log because that may take a while for me to work
15 through even a sample of the items that I'm looking at right now,
16 but I will work through it, and I will give you rulings on those
17 items that have been selected. And at that point, I would
18 suggest, based on that ruling, that the parties can make
19 extrapolations about what the rulings would be on other documents
20 of similar nature.

21 Now, if counsel wants to confer about some selection
22 process from my random sampling of privilege items to take a look
23 at first and suggest a better or more -- a sampling process that
24 is more likely to succeed in giving counsel the guidance that it
25 will need to extrapolate from my sampled rulings, they can do

1 that. I welcome that. If they come up with suggestions, please
2 communicate that to me. I'm, obviously, not going to do this
3 tomorrow.

4 MR. SHENKAN: Your Honor, might I --

5 THE COURT: Mr. Shenkan.

6 MR. SHENKAN: -- might I propose, Your Honor,
7 respectfully, that the Flynn spreadsheet that Mr. Fries
8 referenced, at least be highlighted for Your Honor's use and
9 perhaps that could be one of the first documents that could be
10 reviewed by the Court.

11 THE COURT: Is the Flynn -- the so-called Flynn
12 spreadsheet that Mr. Fries referred to, is that one of the
13 documents that's contained in the boxes that I'm looking at?

14 MR. HOENSCH: So, Your Honor, there were many, many,
15 many spreadsheets created in connection with this action, all at
16 the direction of either outside or inside counsel.

17 MR. SHENKAN: Spreadsheets.

18 MR. HOENSCH: All those of spreadsheets -- you know,
19 there's various forms with different raw data or polished data,
20 initial sets, subsequent sets. It was a work in progress over
21 the course of several months.

22 So, the bottom four boxes, essentially, are all
23 separate versions of the bank's exposure analysis and settlement
24 analysis for this case. So, it's not one particular spreadsheet.
25 It's four boxes, approximately ten -- almost 10,500 pages of

1 spreadsheets, all different iterations, different forms,
2 different information, some not even related to this case, some
3 related to a prior case. There's no one form, which is the
4 bank's ongoing exposure analysis with respect to this case,
5 again, done all at the direction of either --

6 THE COURT: Is --

7 MR. HOENSCH: -- outside counsel or inside counsel.

8 THE COURT: -- is that which Mr. Fries testified to
9 still in existence?

10 MR. HOENSCH: I think what Mr. Fries --

11 THE COURT: His initial production from analytics?

12 MR. HOENSCH: I don't know that you would be able to
13 parse out from --

14 THE COURT: Well, I wasn't --

15 MR. HOENSCH: -- the spreadsheets, which one would
16 actually --

17 THE COURT: -- I wasn't suggesting that I would be
18 doing the parsing.

19 MR. HOENSCH: I'm not sure if we would be able to parse
20 out exactly which one --

21 THE COURT: Okay.

22 MR. HOENSCH: -- would be the first one. We can try to
23 look through dates of potential emails, but, again, there were so
24 many different iterations of the document, some of them are, of
25 course, preliminary, some are very more over expansive than just

1 this case, than just the state, and the time period involved.
2 It's --

3 THE COURT: Well, I suggest that Defense counsel point
4 me to the one most likely to give you a comprehensive idea of my
5 thoughts on privilege, and I'll give you that opportunity.

6 MR. HOENSCH: Yes, Your Honor.

7 THE COURT: All right.

8 MR. SHENKAN: Your Honor, would it be -- would it be
9 helpful or -- you know, I had asked for just the columns to be
10 provided in my letter to you. I don't know that that would --
11 that's privileged to just have the columns -- you know, finance
12 charge, you know, account number, you know, --

13 THE COURT: Do you mean the column labels?

14 MR. SHENKAN: Just the column labels be provided, not
15 the information therein, but just the content of the labels. I
16 would like to review that. And to the extent that it can be
17 provided in a -- with a number at the bottom of what the
18 privilege log is, I would like to provide Your Honor with what I
19 think would be most productive to review as opposed to going
20 through, you know, four boxes of 10,000 pages, which --

21 THE COURT: Well, I'm always glad to hear about more
22 efficient devices to get to the heart of the matter. I will be
23 glad to direct that Defense counsel provide at least the column
24 labels. I don't -- it's hard for me to imagine that that is
25 subject to a serious objection that disclosure of those column

1 labels, as opposed to the data within, is going to compromise
2 either attorney-client privilege or work product doctrine, but
3 let me turn to Defense counsel and find out if their impressions,
4 immediately, are that that is either possible, physically, to
5 give me some notion of what the spreadsheets would reveal if the
6 data were fully occupied.

7 MR. PARKER: And because there are so many
8 spreadsheets --

9 THE COURT: Uh-huh.

10 MR. PARKER: -- the headings are different.

11 THE COURT: The headings are different. Okay.

12 MR. PARKER: So, it would involve parsing out the
13 headings of each individual spreadsheet. Some are the same, some
14 are very different. It's not all one spreadsheet.

15 THE COURT: Well, I think that I'm going to slog
16 through some documents, and I'll do the best I can. And probably
17 once I delve into the documents, I'll have a better idea of
18 precisely what will help me get to the point of the matter and
19 will do that. I think that at this point, not having looked at
20 the documents at all, I'm not positioned, ideally, to be more
21 efficient than that, based on what I'm hearing.

22 So, that's it as far as I can see for the privilege
23 documents. As far as any sanctions motion, I am postponing and
24 will take that under advisement. And at such time as we get some
25 cures together, and we have some disposition on the substance of

1 the discovery disputes, then we can take up the sanctions issue
2 and determine whether sanctions are appropriate or not.

3 I think that concludes this matter. Is there anything
4 either counsel wishes to add?

5 MR. PARKER: Your Honor, just very, very minor
6 points --

7 THE COURT: Yes.

8 MR. PARKER: -- with respect to the memorandum, and I
9 don't know if you want to go through them now or if you want us
10 to provide written correspondence. Just really, sort of
11 really --

12 THE COURT: This is the memorandum we directed that you
13 provide?

14 MR. PARKER: Yes, Your Honor. That's correct.

15 THE COURT: Yes, go ahead.

16 MR. PARKER: So, with respect to your decision -- I'm
17 sorry?

18 MS. EDWARDS: In regards to the tentative order, not
19 the --

20 MR. PARKER: Yeah, the tentative order, Your Honor,
21 that you issued --

22 THE COURT: Yes.

23 MR. PARKER: -- yesterday, right?

24 THE COURT: Yes.

25 MR. PARKER: Okay. I'm sorry, if I --

1 THE COURT: No, go ahead.

2 MR. PARKER: -- didn't make that clear.

3 THE COURT: My memorandum, not the one that I'm
4 expecting from you?

5 MR. PARKER: Yes, Your Honor.

6 THE COURT: I called it a memorandum, because it wasn't
7 really an order. Go ahead.

8 MR. PARKER: Understood. So, with respect to
9 interrogatory number 2, Your Honor's memorandum indicated that
10 Plaintiff has asked for an account of all the deficiencies for
11 all the class members, but that is not what the interrogatory
12 actually indicates. The interrogatory number 2 indicates that
13 it's the request was to "Please state the aggregate sum of all
14 deficiencies you claim are due and owing as a result of the date
15 of answering this discovery request for a certain class."

16 So, we're just -- we're looking for some clarification,
17 but really it should be -- the order we would suggest should
18 match the actual interrogatory. And there is a difference
19 between the two.

20 THE COURT: Very well.

21 MR. PARKER: Yes.

22 THE COURT: I will amend it.

23 MR. PARKER: Thank you, Your Honor. With respect to
24 interrogatories number 7 and number 8, we had noted that Your
25 Honor had, in certain circumstances, permitted the Defendant to

1 either supply an -- answer under oath, or by following the
2 procedure outlined in Federal Rule of Civil Procedure 33(d).

3 We would just ask that with respect to the responses
4 for interrogatory number 7 and number 8, if Your Honor could
5 possibly add that similar language for those two particular
6 interrogatories, because we do think that those interrogatories
7 are conducive to a thirty-three-three -- 33(d) disclosure where
8 they're identified by bates range.

9 THE COURT: I will amend.

10 MR. PARKER: Thank you, Your Honor. With respect to
11 production of document -- request for production number 7, this
12 was -- this is one of the very few where we're actually, I
13 suppose, requesting a reconsideration of it, mostly not doing
14 that. Any complaints filed by you -- this is document request
15 number 7 -- any complaints filed, and any other lawsuit or
16 administrative action in any state relating to any aspect of your
17 policy, practice, or procedure, et cetera, et cetera.

18 The request, as phrased, doesn't limit this to policies
19 and procedures for Pennsylvania borrowers, nor does the request
20 limit to policies and procedures that were actually in effect
21 during the class period.

22 So, we would ask, to the extent that Your Honor is
23 willing to reconsider that particular ruling -- I'm sorry?

24 THE COURT: I will.

25 MR. PARKER: Oh, this is a different definition too.

1 THE COURT: I'll reconsider.

2 MR. PARKER: Thank you, Your Honor.

3 THE COURT: I'll advise.

4 MR. PARKER: And my colleagues have just pointed out
5 too that interrogatory number 8, the way it's described in Your
6 Honor's memorandum is different from the actual interrogatory and
7 that could make a difference from a substantive perspective as
8 well.

9 THE COURT: What is the actual language in
10 interrogatory number 8? I did not purport to, verbatim, include
11 the language, but to the extent that my effort at summary has led
12 to some ambivalence or ambiguity, I'm willing to correct it.

13 MR. PARKER: No, we --

14 THE COURT: What is the --

15 MR. PARKER: -- we appreciate that, Your Honor. We
16 just --

17 THE COURT: What is it?

18 MR. PARKER: -- wanted to make sure that there wasn't
19 any -- so, interrogatory number 8 says: "Please state the
20 aggregate sum of the expense of storing the vehicle listed in the
21 notice of repossession for all putative class member." And the
22 actual interrogatory is for -- I'm sorry. Your description says:
23 "The aggregate amount Defendant actually paid for storing the
24 vehicles, which is different from the aggregate sum listed on the
25 notice of repossession.

1 THE COURT: Very well.

2 MR. PARKER: That's actually very different.

3 MR. SHENKAN: I think that was the second -- I think
4 that was 8.

5 MR. PARKER: Yes, that was 8. That's exactly right.

6 MR. SHENKAN: Right. So, one was billed and the other
7 one was actually paid. So, the -- I --

8 THE COURT: Well, number 7 is for actually paid for all
9 third-parties for storage expenses. What we'll do is this.
10 Defense, you can propose amended language that would probably be
11 more efficient, and more precise, and allow Plaintiffs' counsel
12 to see, in writing, the language that you're proposing for
13 amendment of the tentative order.

14 MR. PARKER: Yes, Your Honor.

15 THE COURT: And you can do that for all your requests.
16 You can go ahead and verbally explain them now, but what I want
17 to do is have you follow-up in writing, so we're all clear on
18 what you're suggesting.

19 MR. PARKER: Yes, Your Honor. Absolutely.

20 THE COURT: Okay.

21 MR. PARKER: And the last one to make was with respect
22 to -- and we will include this in the correspondence. The class
23 sample list. You had indicated it would be filed under seal, and
24 our understanding was that if we -- that the better way to go
25 would be an in camera review as to actually filing it on the

1 docket under seal.

2 THE COURT: That's fine. You can do it under -- in
3 camera.

4 MR. PARKER: Thank you, Your Honor.

5 THE COURT: Yeah.

6 MR. PARKER: And then Judge Beetlestone had previously
7 indicated with respect to that list that we were going to use
8 account numbers rather than names.

9 THE COURT: Very well.

10 MR. PARKER: Thank you. The very last point --

11 THE COURT: Uh-huh.

12 MR. PARKER: -- and I promise I'm done. Your Honor, in
13 the memorandum, had indicated that the deadline for the burden
14 submission, and I believe that statistician submission was
15 November 23rd. That is the day after Thanksgiving. So --

16 THE COURT: Oh, heavens.

17 MR. PARKER: -- do we get one more week?

18 THE COURT: Yes, I'm glad to give one more week. And
19 you'll note that in your written request --

20 MR. PARKER: Yes, Your Honor.

21 THE COURT: -- so that we have it all in one place.

22 MR. PARKER: That's all I've got.

23 THE COURT: Okay.

24 MR. PARKER: Thank you very much.

25 THE COURT: Mr. Shenkan.

1 MR. SHENKAN: Your Honor, if it makes sense I would
2 suggest, Your Honor, where the -- since the sampling in your pre-
3 tentative was reduced from 20 to 10, simply to wait for the
4 production of the initial discovery, and I would like to be able
5 to consult with Defense counsel with respect to the TeamViewer
6 idea, and then hold that simply in abeyance right now as far as
7 the numbers, because I just think it's most efficient as opposed
8 to just picking a number. It might be less.

9 THE COURT: Yeah. So, what you're saying is -- explain
10 it to me. Maybe because it's 4:30, and I've got a, you know,
11 chocolate deficiency or something, but I'm not quite sure where
12 that said it.

13 MR. SHENKAN: All that I'm -- all that I'm asking, Your
14 Honor, is to withdraw from your order with respect to the
15 sampling number right now to -- they're going to brief the
16 TeamViewer idea -- the concept. I would like to be able to have
17 Stark weigh in, because to the extent that we might --

18 THE COURT: Okay.

19 MR. SHENKAN: -- be able to narrow this even more than
20 that, you know --

21 THE COURT: So, are you suggesting -- right now, are we
22 really talking about staging briefing in such a way that the
23 sampling decision gets put off a little bit --

24 MR. SHENKAN: Yes, Your Honor.

25 THE COURT: -- and we talk about some of the issues

1 that talked today --

2 MR. SHENKAN: That's all I want to do, is just put it
3 off.

4 THE COURT: Does the Defense -- I can't imagine the
5 Defense would be objecting to that, but I'll hear from the
6 Defense.

7 MR. PARKER: Your Honor, if you're imagining that we
8 can't object to it --

9 THE COURT: Uh-huh.

10 MR. PARKER: -- then I suspect that we should not be
11 objecting --

12 THE COURT: Well, no, no. As I conceive of counsel's
13 comment, it is that let's square away follow-up briefing from
14 this hearing first before I start imposing what is a fairly
15 demanding response period for getting together, you know, what
16 the sampling size is going to be. And I'm okay with that. I
17 just want to make sure that I'm not mistaking the pros and cons
18 of this. And if Defense counsel has any comment on that, it
19 would seem to me that that does make some sense is to try and
20 square away some of the issues here before we launch into what
21 the sample size is going to be and so forth.

22 MR. PARKER: Yeah, that could make some sense.
23 Honestly, Your Honor, we would probably like just a little bit of
24 time to consider that possibility.

25 THE COURT: Okay. Well, then why don't you do that in

1 terms of comment -- you can provide me with -- I'll treat that as
2 sort of another amendment to my tentative order. And if you can
3 provide comments, and then that will give Mr. Shenkan an
4 opportunity to respond to your comments and proposed changes.

5 Mr. Shenkan, you can do the same by letter. I don't --
6 I welcome the suggestion, but I think it's probably better -- I'm
7 not adverse to making quick pitch softball decisions from the
8 bench on major issues, but I think it's probably beneficial for
9 all concerned to have a few days to think it through, put it down
10 in writing, and tell me how the memorandum -- my memorandum
11 should be amended.

12 MR. PARKER: Yes, sir.

13 MR. SHENKAN: Your Honor, can he have seven days to
14 submit whatever he wants to do to change the order or amend the
15 order, and I'll have seven days just to give you my responses?

16 THE COURT: That's fine. Let me question though, I
17 have also directed substantive responses, not just sort of how
18 the order should be amended. So, substantive responses, and I
19 said seven days during the hearing. Now, that may be a little --
20 if you want seven days to give me comments on the tentative
21 order, that's fine, and an additional seven days to get your
22 substantive responses together based on this that's fine.

23 MR. PARKER: That would be extremely helpful, Your
24 Honor.

25 THE COURT: It would help me to sort of get the picture

1 of where we're headed a little bit straighter, and I think that's
2 reasonable. That takes us out seven days for the comments. Mr.
3 Shenkan, you'll have an additional seven days to do any kind of
4 rebuttal comments. And at the same time, counsel for the Defense
5 will be working on the substantive responses that we've indicated
6 through today.

7 MR. PARKER: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. SHENKAN: Your Honor, I only have just, I think,
10 four issues that I would just like to put on the record very
11 quickly --

12 THE COURT: Very well.

13 MR. SHENKAN: -- and then follow-up with a letter. To
14 the extent that there's total deficiencies, I agree with Defense
15 counsel that I would like to get an aggregate, but to the extent
16 that it's easy to provide me with the number of people that have
17 filed for bankruptcy that have a zero deficiency, if that
18 information is readily available, I would like to have that as
19 part of the deficiency issues.

20 Seven and 8, I agree with Defense counsel we just have
21 to clarify, but I don't want to have -- I think that it would be
22 absolutely cumbersome for me to be given those documents when
23 they know exactly how much money they have billed and how much
24 money they obtained through the storage.

25 So, I would like them to provide you with a reason why

1 they want to give me documents, you know, perhaps in a letter,
2 knowing that that information could be readily culled from their
3 database.

4 Your Honor, you had indicated in number 10, that the
5 process used to determine the class size, and you denied my
6 request for that. Simply as a matter of clarification, I only
7 want to know how it was determined from their metrics unit, what
8 they did. You know, what queries did they do. What the process
9 was --

10 THE COURT: Uh-huh.

11 MR. SHENKAN: -- because I think it will glean a lot of
12 relevant data for additional information for the case.

13 8 and 9 -- discovery request 8 and 9, Your Honor
14 granted that request, thank you, but I also would like to get the
15 templates for both --

16 THE COURT: Uh-huh.

17 MR. SHENKAN: -- not just the exemplars. And, number
18 14, the request for production, I would like it not to be limited
19 to just the -- you said concerning repo. I have a bunch of
20 issues with storage and transportation, and what have you. I
21 simply wanted to make sure that it's granted with, you know, of
22 my request.

23 Other than that, Your Honor, thank you. I think all
24 parties appreciates your indulgence today, Your Honor, and your
25 patience.

1 MR. PARKER: I would certainly agree with that, Your
2 Honor.

3 THE COURT: Well, you're welcome. And I thank counsel
4 for patiently going through the documents as well as the
5 information on a case that is going to take me some time to get
6 up to speed on.

7 Let me suggest then to summarize what my understanding
8 of a deadline -- an appropriate deadline schedule would be, so
9 that everybody is clear. The only thing that I'll issue is
10 probably Monday, a short scheduling order based on responses that
11 we discussed right now. I'm going to make sure that counsel has
12 the opportunity to put in writing what their comments are in
13 terms of how the order should be amended -- the final order.

14 So, I think that's the first thing we need to get to.
15 I'll say seven days for both sides to supply their initial
16 comments. If there's any responses or having viewed the other
17 side's seven day proposal for amendments to the order, there may
18 be responses necessary and counsel will do those in four business
19 days thereafter, so that we have that done and completed, and I
20 have a picture of what you want the amended order to look like.

21 The second part of the briefing schedule then will
22 ensure that the Defense has 14 days from today to provide me with
23 the substance of the various objections and comments during the
24 course of this hearing that it had. And the Plaintiff will have
25 seven days, thereafter, and that will be 21st day, for response

1 to the substance.

2 We will defer and postpone -- and this should be part
3 of your commentary on the changes to the order, but my
4 understanding is now that I'm going to defer or postpone full
5 gear on the sampling issues that I've identified in my order
6 pending some straightening out of what this order should look
7 like. So, I'm going to wait on that, and then impose whatever
8 deadlines at a future date.

9 Does that make sense as we're sitting here right now at
10 4:30 on a Friday afternoon?

11 MR. SHENKAN: Yeah.

12 MR. PARKER: Yes, Your Honor.

13 THE COURT: Okay. If there's --

14 MR. SHENKAN: It makes a lot of sense.

15 THE COURT: -- and if there's any commentary about
16 jockeying dates or anything, I'm not -- these are not -- they're
17 orders, but I understand also that we're coming up on the holiday
18 season, so if counsel wants to say can we -- you know, if 14 days
19 happens to be on Thanksgiving or 21 days, I'm not stuck on it.
20 It could be the day after or the Monday following Thanksgiving.
21 Is that clear?

22 MR. SHENKAN: Yeah, I understand.

23 MR. PARKER: Yes.

24 MR. SHENKAN: Thank you very much, Your Honor.

25 THE COURT: Okay. Is there anything further that we

1 should do before we adjourn?

2 MR. PARKER: I don't believe so, Your Honor.

3 THE COURT: Nothing from the Defense. Anything from
4 Plaintiff? That long pause tells me that it can't be critical.

5 MR. SHENKAN: Thank you very much, Your Honor.

6 THE COURT: Very well. We're adjourned. Thank you,
7 counsel.

8 MR. PARKER: Thank you.

9 (Proceedings concluded at 4:30 p.m.)

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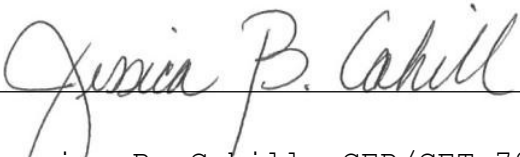
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CERTIFICATE

I, Jessica B. Cahill, court approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: November 6, 2018



Jessica B. Cahill, CER/CET-708